

APPENDIX C:

**WATER AND SANITATION
CONTRACTS**

**Comprehensive Study of American Canyon
Public Workshop Report**

NCFCWCD WATER ALLOCATIONS (ACRE FEET)

TABLE A: ANNUAL ENTITLEMENT

Year	Napa	American Canyon	Calistoga	Yountville	St. Helena	Annual Total
1983	3000	1400				4400
1984	3000	1500	145			4645
1985	3000	1600	165			4765
1986	3000	1700	180			4880
1987	3200	1800	200			5200
1988	3400	1900	220	225		5745
1989	3700	2000	240	255		6195
1990	4000	2200	260	283		6743
1991	4300	2400	275	315		7290
1992	4600	2600	295	345		7840
1993	5000	2800	315	375		8490
1994	5400	3000	335	400		9135
1995	5800	3200	355	425		9780
1996	6200	3400	375	452		10427
1997	6600	3600	390	475		11065
1998	7000	3800	410	500		11710
1999	11350	3500	500	500		15850
2000	11600	3700	525	500		16325
2001	12850	4300	1475	1100	1000	20725
2002	13100	4400	1500	1100	1000	21100
2003	13350	4500	1525	1100	1000	21475
2004	13600	4600	1550	1100	1000	21850
2005	13850	4700	1575	1100	1000	22225
2006	14100	4750	1600	1100	1000	22550
2007	14350	4800	1625	1100	1000	22875
2008	14600	4850	1650	1100	1000	23200
2009	14850	4900	1675	1100	1000	23525
2010	15100	4950	1700	1100	1000	23850
2011	15350	5000	1725	1100	1000	24175
2012	15600	5050	1750	1100	1000	24500
2013	15800	5100	1775	1100	1000	24775
2014	16100	5150	1800	1100	1000	25150
2015	16700	5200	1825	1100	1000	25825
2016	17300	5200	1850	1100	1000	26450
2017	17900	5200	1875	1100	1000	27075
2018	18500	5200	1900	1100	1000	27700
2019	19100	5200	1925	1100	1000	28325
2020	19700	5200	1925	1100	1000	28925
2021	19800	5200	1925	1100	1000	29025

CONTRACT FOR WATER SUPPLY FROM NORTH BAY AQUEDUCT
BETWEEN
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
AMERICAN CANYON COUNTY WATER DISTRICT

2.
Nov. 4, 1967
C. E. DUFFY, Clerk
By H. J. Davis
Deputy Clerk

THIS CONTRACT made and entered into this 15th day of November,
1966, by and between NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a public agency in the State of California created and existing under and by virtue of Chapter 1449 of the 1951 Statutes of California, as amended, hereinafter referred to as "the Agency" and AMERICAN CANYON COUNTY WATER DISTRICT, a public body of the State of California, hereinafter referred to as "American Canyon".

WITNESSETH:

The parties hereto agree as follows:

1. Definitions:

(a) "The State contract" means the water supply contract between the State of California and the Agency dated December 19, 1963, together with Amendment No. 1 thereto dated September 22, 1964.

(b) Each of the terms defined in Article 1 of the State contract shall have the same meaning in this contract unless distinctly expressed or manifestly incompatible with the intent hereof.

(c) "North Bay Aqueduct" means the project transportation facilities from Lindsay Slough into Napa County.

(d) "The Solano portion of the North Bay Aqueduct" means those reaches of the North Bay Aqueduct from Lindsay Slough to the Cordelia pumping plant, which are expected to be completed in 1980.

(e) "The Napa portion of the North Bay Aqueduct" means

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ENGINEERING & ROAD DEPT.
COUNTY OF NAPA

those reaches of the North Bay Aqueduct from the Cordelia pumping plant into Napa County.

(f) "Member Unit" means any city, water district or other entity (including American Canyon) which enters into a contract with the Agency for a water supply delivered through the North Bay Aqueduct.

2. Term of contract: This contract shall become effective on the date first above written and thereafter shall remain in effect throughout the term of the State contract.

Subject to
conditions in
R 15

3. Quantity:

(a) Subject to the provisions of this Agreement, the Agency will make available for delivery to American Canyon the amounts of project water designated in Table A attached hereto and made a part hereof.

(b) If, from time to time, on the basis of studies conducted jointly by the parties, it is determined that the water requirements of American Canyon from the North Bay Aqueduct are different from those set forth in Table A, the parties by mutual agreement may amend Table A, provided that the quantities therein set forth shall not be decreased unless all member units of the Agency collectively have contracted for the entire entitlement of the Agency under the State contract and one or more member units other than American Canyon shall then contract for such decrease.

4. Source of water: From the year of initial water delivery until the Solano portion of the North Bay Aqueduct is completed the water supplied hereunder will be water furnished to the Agency by

Solano County Flood Control and Water Conservation District in the terminal reservoir of the Putah South Canal of the Solano Project. Thereafter all water supplied hereunder shall be project water pumped from the Delta.

5. Point of delivery: Water made available for delivery to American Canyon hereunder shall be delivered to American Canyon by the State at the delivery structure on the North Bay Aqueduct within the County of Napa that is most convenient to the District.

This implies
only one
delivery
point

6. Time and rate of delivery:

(a) The year of initial water delivery shall be the year in which the State completes the construction of the Napa portion of the North Bay Aqueduct, but not earlier than 1968. The Agency shall make all reasonable efforts to assure that a continuous supply of water is made available for delivery to American Canyon from and after the year of initial water delivery.

(b) The Agency shall not be obligated to deliver water to American Canyon at an instantaneous rate of flow in excess of 9.5 cubic feet per second.

(c) The parties recognize that the Agency's ability to meet the American Canyon's peak delivery requirements is limited by (1) the delivery capacity of the North Bay Aqueduct, (2) the provisions of the State contract, and (3) the requirements of its other member units. Within these limitations the Agency will make all reasonable efforts to meet the peak delivery requirements of American Canyon and its other member units. If the Agency is unable to do so it shall not be obligated to deliver to American Canyon in any calendar month more

What about delivery
capability of Solano?

American Canyon

than that portion of 11% of the Agency's entitlement for such year as American Canyon's entitlement for such year bears to the total of all member units' entitlements for such year.

(d) The amounts, rates and times of delivery of project water to American Canyon hereunder shall be established in the same manner as is provided for the Agency in Article 12(a) of the State contract except that American Canyon shall deliver a preliminary water delivery schedule to the Agency on or before September 1 of each year, and except that in applying the provisions of said Article 12(a) of the State contract to this contract the undertakings of the State therein shall be deemed to be the undertakings of the Agency and the undertakings of the Agency therein shall be deemed to be the undertakings of American Canyon. ←

7. Measurement of water delivered: Project water delivered to American Canyon hereunder shall be measured by the State or, if the State fails to do so, by the Agency, in accordance with Article 11 of the State contract.

this needs
to be
investigated

8. Non-responsibility of the Agency:

(a) The Agency makes no warranty as to the quality of water to be delivered hereunder. The Agency will use its best efforts to assure that such water will be of the best quality deliverable under the circumstances from time to time prevailing.

delivered water
not potable

(b) Neither the Agency, nor any of its officers, agents or employees, shall be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available for delivery to American Canyon under this contract caused by drought,

operation of area of origin statutes, or any other cause beyond the control of the Agency.

(c) The Agency reserves the right, in the event that at any time the quantity of water available to the Agency in the North Bay Aqueduct is less than the aggregate of the entitlements of all member units, to allocate the quantity of water available to the Agency among its member units in such manner as the Agency shall determine to be equitable, taking into consideration the availability of other water supplies and the needs of each member unit respectively, provided, however, that any shortage continuing for more than twenty-one (21) days shall be allocated by the Agency among its member units in proportion to their respective maximum annual entitlements; and provided further, however, that if all member units agree on a different method of allocating shortages, then the Agency shall allocate such shortages in accordance with such agreement.

What about
6(c) herein

(d) Neither the Agency nor any of its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal or distribution of water delivered hereunder, nor for any damage or claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the same.

9. Responsibility of American Canyon: Subject to the provisions of this contract, American Canyon shall be solely responsible for the control, carriage, handling, use, disposal and distribution of water supplied to American Canyon hereunder after it has passed

the delivery structure referred to in Section 5 hereof. American Canyon shall indemnify and hold harmless the State and the Agency and their respective officers, agents and employees from damage or claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond said delivery structure.

10. Applicability of State and Federal Contracts:

(a) This contract and all the rights and obligations of the parties hereto are, and shall be, subject to all the applicable terms, conditions and limitations contained in the State contract. Receipt of a copy of the State contract is hereby acknowledged by American Canyon.

(b) During the period when water made available for delivery hereunder is furnished by Solano County Flood Control and Water Conservation District from the Putah South Canal of the Solano Project, this agreement shall be subject to all the applicable terms, limitations and conditions contained in the water supply contract between the Agency, Solano County Flood Control and Water Conservation District, and the State of California dated . American Canyon hereby acknowledges receipt of a copy of said contract.

11. Payments by American Canyon:

(a) On or before October 1 of each year, commencing with the year preceding the year of initial water delivery, the Agency shall establish and announce the charge to be paid by American Canyon for the water supply to be made available for delivery to

American Canyon hereunder during the following year.

(b) The charge shall be sufficient to return to the Agency over such reasonable period of time as shall be determined by the Agency the total of, but not more than, the amount of money disbursed by the Agency to provide water service to American Canyon hereunder, together with interest at the Project interest rate, computed in the same manner as under the State contract, on such disbursements from the time the same are made until the time the same are paid by American Canyon. The charges consist in the total of the following components:

(1) American Canyon's share of the transportation capital costs paid by the Agency to the State which share shall be in the proportion that American Canyon's maximum annual entitlement bears to the Agency's maximum annual entitlement as each may be hereafter modified, together with interest at the Project interest rate on any installments thereof prepaid by the Agency.

(2) The costs paid by the Agency for facilities, delivery structures and measuring devices constructed solely for the purpose of effecting delivery of water from the North Bay Aqueduct to American Canyon. If any of such facilities are used by another member unit, or units, the costs thereof shall be allocated between American Canyon and such other member unit or units on the basis of their respective proportionate use thereof.

this cost
needs to
be determined

(3) The cost to the Agency of the water furnished

each year to American Canyon, including the price paid therefor to Solano County Flood Control and Water Conservation District, or to the State as the Delta Charge, as the case may be, and including the operation, maintenance, power and replacement component of the Transportation Charge.

(4) Any minimum charges as determined by American Canyon's annual entitlements set forth in Table A hereof which are paid by the Agency to the State or to Solano County Flood Control and Water Conservation District.

(5) Any surcharge paid by the Agency to the State by reason of the use on excess lands of water delivered to American Canyon hereunder.

(6) Any interest or penalty paid by the Agency by reason of late payment by American Canyon of charges due hereunder.

(c) The charge shall be paid by American Canyon to the Agency in semi-monthly installments, not necessarily equal, and not later than fifteen (15) days after receipt of the Agency's invoices therefor. The Agency's invoices shall be in such amounts that the Agency shall receive from American Canyon and other member units funds to pay the Agency's current obligations hereinabove set forth to the State and to Solano County Flood Control and Water Conservation District not sooner than thirty (30) days prior to the date the same become due ~~to the State~~, except that American Canyon's share of costs payable by the Agency prior to the year 1980 shall be paid by American Canyon to the Agency in installments over the period of time from the year of initial water delivery to the year 1980.

15 this for
all costs
prior to 1980

repayment schedule
needs to be
worked out

(d) If, by agreement of the parties, American Canyon's maximum entitlement is hereafter increased, American Canyon shall, over such reasonable period of time as shall be agreed upon, pay retroactively the additional transportation capital cost allocable to such increase together with interest thereon at the Project interest rate.

(e) If, by agreement of the parties, American Canyon's maximum entitlement is hereafter decreased, the Agency shall, if, as and when the transportation capital cost and interest allocable to such decrease is paid for by another member unit, refund to American Canyon the transportation capital cost and interest allocated to such decrease theretofore paid by American Canyon.

(f) The Agency will by written agreements impose upon each of its member units a charge for all water furnished through the North Bay Aqueduct which charge shall be determined, invoiced and paid in the manner set forth in this Section 11.

12. Area of use:

(a) The service area of American Canyon is that portion of Napa County shown on the map attached hereto entitled "Service Area of American Canyon", and hereby incorporated herein.

(b) So far as it is reasonably able to do so American Canyon will supply water throughout its service area. If American Canyon is unable or unwilling to serve water on reasonable terms, conditions and rates to any part of its service area and another member unit is able and willing to serve project water thereto on reasonable terms, conditions and rates, then such part shall be

Do we have
this
attachment

withdrawn from American Canyon's service area. For the purpose of this subsection (b), a condition imposed by American Canyon that water service will not be furnished to land unless such land is annexed to American Canyon shall not, by itself, be deemed to be an unreasonable condition. The foregoing shall not be construed as an endorsement by the Agency of such condition, but is regarded as a matter to be determined by American Canyon.

(c) The Agency will not supply project water to any entity other than American Canyon for use within any portion of American Canyon's service area.

(d) American Canyon will not, without the prior written consent of all other member units affected thereby, distribute water within any of the following areas outside American Canyon's service area:

(1) Any area within the service area of another member unit.

(2) Any area wherein another member unit acquires all the water distribution facilities of American Canyon.

Nothing in this contract, however, shall prevent American Canyon from distributing water within the service area of the Napa Junction water system which American Canyon is proposing to acquire from California-Pacific Utilities Company, from the time American Canyon acquires the system throughout the time it continues to own such system.

(e) As used in this Section 12 the words "water distribution facilities" include only the facilities used to serve the

area in question and not through transmission lines or facilities used to serve other areas.

13. Validation: Within six (6) months after the effective date of this contract, American Canyon shall submit this contract to a court of competent jurisdiction for determination of its validity by a proceeding in mandamus or other appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment. In the event that this contract is determined to be invalid by such final decree or judgment American Canyon and the Agency shall make all reasonable efforts to obtain validating legislation at the next session of the Legislature empowered to consider such legislation, and within six (6) months after the close of such session, if such legislation shall have been enacted, American Canyon shall submit this contract to a court of competent jurisdiction for redetermination of its validity by appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment.

14. Miscellaneous provisions:

(a) Articles 31 and 44 of the State contract, changed with the word "Agency" substituted wherever the word "State" appears therein and the words "American Canyon" substituted wherever the word "Agency" appears therein, are hereby incorporated herein as though set forth in full at this point and the same shall apply to, and bind and benefit the parties hereto.

(b) The Agency shall not offer any quantity of project water for municipal or industrial purposes for sale or delivery to

anyone at a lesser cost than provided herein, unless and until it shall have offered American Canyon a reasonable opportunity to contract for an equal amount of water on the same terms and conditions.

(c) Contracts executed by the Agency with its other member units for a water supply from the North Bay Aqueduct shall be substantially in the form of this contract with respect to basic terms and conditions, including, without limiting the generality of the foregoing, the requirement that all member units other than American Canyon pay in charges all costs paid by the Agency for facilities, delivery structures and measuring devices constructed solely for the purpose of effecting delivery of water from the North Bay Aqueduct to member units other than American Canyon. The purpose of this provision is to assure each member unit that it will not be prejudiced by the Agency's agreements with other member units. This subsection (c) shall be liberally construed to accomplish this purpose and to achieve the maximum beneficial use of project water. The total entitlements of all member units for any year shall not exceed the total entitlements of the Agency under the State Contract and the Contract referred to in Section 10(b).

15. Conditions Precedent

(a) This contract shall take effect only if and when American Canyon has acquired that portion of the California-Pacific Utilities Company Napa Junction Water System lying south of the intersection of Jamieson Canyon Road and Napa-Vallejo Highway; has successfully sold and issued revenue bonds necessary to finance said

What is status of these provisions


acquisition; and has obtained a loan under the State of California Davis-Grunsky Act or any other financing necessary to the construction of facilities (including pipelines, reservoirs and treatment plants) necessary to utilize project water.

What about use of City
of Napa's water? - Finding

(b) If prior to the 31st day of December 1967, American Canyon has not notified the Agency that the conditions set forth in subsection (a) of this Section 15 have happened or may be deleted from this agreement by reason of the fact they are not necessary to American Canyon's providing water service to the lands and inhabitants of its district, then this contract shall be rescinded and be of no further force or effect and neither party shall be under obligation to the other by reason of this contract.

IN WITNESS WHEREOF, the parties hereto have executed this contract by their respective officers thereunto duly authorized on the date first above written.

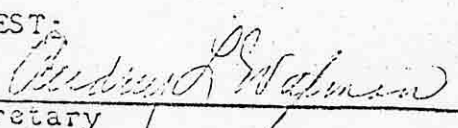
ATTEST:


Secretary
(Seal)

NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT

By 
Chairman

ATTEST:


Secretary
(Seal)

AMERICAN CANYON COUNTY WATER
DISTRICT

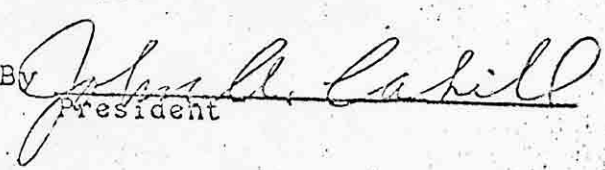
By 
President

TABLE A
ANNUAL ENTITLEMENTS
AMERICAN CANYON COUNTY WATER DISTRICT

<u>Year</u>	<u>Total Annual Amount in Acre-Feet</u>
1*	500**
2	600 — 1968
3	750
4	900
5	1100
6	1250
7	1400
8	1600
9	1750
10	1900
11	2150
12	2200
13	2400
14	2600
15	2900
16	3150
17	3400
18	3700
19	3900
20	4200
21	4500
22	4900
23	5200

And each succeeding year thereafter for the term of this contract as a maximum annual entitlement 5200

* Anticipated to be 1968.

** To be prorated for the period from the date of initial availability of water from the Napa portion of the North Bay Aqueduct to the end of the year.



WATER SERVICE AGREEMENT

This Water Service Agreement ("Agreement") dated as of May 1, 1996, is made by and between the CITY OF VALLEJO, a chartered city located in the County of Solano, State of California (hereinafter referred to as "Vallejo"), and the CITY OF AMERICAN CANYON, a municipal corporation located in the County of Napa, State of California (hereinafter referred to as "American Canyon").

WITNESSETH:

WHEREAS, upon completion of transmission, regulation, and metering facilities from the Vallejo water treatment and distribution system (collectively, the "Vallejo Water Facilities") to the American Canyon water distribution system (collectively, the "American Canyon Water Facilities"), American Canyon desires to purchase potable water from Vallejo; and

WHEREAS, American Canyon has limited treatment capacity and therefore also desires to convey raw water to Vallejo for treatment and transmission to the American Canyon Water Facilities for distribution within the American Canyon water service area; and

WHEREAS, Vallejo presently has available water treatment and conveyance capacity to supply potable water to American Canyon; and

WHEREAS, American Canyon also wishes to supply water to certain areas within its water service area where the transmission facilities to supply such water are presently insufficient, but where Vallejo has existing transmission facilities sufficient to service the areas.

WHEREAS, Vallejo is willing to sell American Canyon a permanent supply of potable water, to treat American Canyon excess raw water, and to provide facilities to transmit American Canyon water to certain areas within the American Canyon water service area according to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, it is agreed that:

AGREEMENT

1. Right to Purchase Water.

- a. Upon construction by American Canyon at its cost of transmission, regulating, and metering facilities (collectively, the "American Canyon Transmission Facilities") to convey Vallejo potable water to the American Canyon Water Facilities, American Canyon shall be permitted to purchase potable water from Vallejo at such metering and connection points as mutually agreed to by Vallejo and American Canyon, subject to such limitations and conditions as hereinafter provided.
- b. Vallejo acknowledges that American Canyon's water service area as depicted in Exhibit "A" attached hereto and by reference made a part hereof, exceeds the present American Canyon corporate boundaries. Vallejo agrees that American Canyon may service public or private entities within its water

service area whether by contract or permit and that American Canyon may sell potable water to such entities supplied in whole or in part by Vallejo. Vallejo shall consider such potable water to be the potable water of American Canyon at any point downstream of the metering and connection points and American Canyon shall be entitled to all revenues from water service within its water service area, except for those existing connections to Vallejo Water Facilities within American Canyon which predate the incorporation of American Canyon and for which Vallejo directly collects payment. Under no circumstances shall American Canyon convey and sell water outside the boundary depicted in Exhibit "A," without prior written approval from Vallejo which shall not be unreasonably withheld.

2. **System Operation and Maintenance.** Vallejo shall maintain and operate the Vallejo Water Facilities within its territorial limits as required by federal and state regulations, shall pump and treat raw water to produce the potable water to meet the requirements, now, or hereafter enacted, of the appropriate federal, state, local governmental, and other regulatory authorities having jurisdiction over the operation of the Vallejo Water Facilities, and shall maintain and operate the Vallejo Water Facilities to the connection points. American Canyon shall maintain and operate the American Canyon Transmission Facilities, with the exception of the flow meters as noted in Section 7 below, and the American Canyon Water Facilities within its service area boundary as required by federal and state regulations, including all routine and special water quality monitoring.
3. **Raw Water Supply.** American Canyon shall endeavor to supply excess raw water to Vallejo which Vallejo shall treat and transmit to American Canyon. The normal source of such water shall be American Canyon water from the California Water Project North Bay Aqueduct (NBA). Vallejo shall pay American Canyon \$75 per acre-foot of water supplied by American Canyon delivered at the United States Bureau of Reclamation Terminal Reservoir or at the State Water Project Cordelia Forebay Reservoir which shall be credited against American Canyon's monthly quantity fee for Vallejo water as set forth in Section 4.b. The \$75 credit per acre foot of raw water supplied by American Canyon shall be subject to adjustment as provided in Section 4.b. If NBA water is unavailable, American Canyon may, at its option, purchase other water such as water stored in Lake Berryessa on an "as-available" basis and Vallejo shall treat and transmit such water to American Canyon on the same terms as if the water were NBA water.

If American Canyon does not supply raw water to Vallejo, Vallejo shall continue to deliver treated water to American Canyon; provided, however, American Canyon's maximum delivery will be reduced in the same proportions as any reduction to Vallejo customers inside the Vallejo City limits. To the greatest extent possible, there shall be no reduction in delivery to American Canyon of the quantities of raw water supplied to Vallejo by American Canyon for treatment and transmission to American Canyon. However, American Canyon recognizes that reductions in supply to American Canyon may occur if Vallejo suffers from mechanical problems, including but not limited to loss of pumping capacity, or problems affecting the Vallejo treatment facilities and water mains. When Vallejo supplies raw water, and

treats it for transmission to American Canyon, American Canyon shall pay the full rate as specified in Section 4.b.

4. **Fees and Charges.**

- a. **Initial Connection Fee and Initial Capacity.** American Canyon shall pay a water connection fee (the "Connection Fee") to connect to the Vallejo Water Facilities for potable water service of \$1,428,571 for a maximum-day capacity of 1.00 million gallons per day (mgd). The connection fee is for the purchase of capacity in the Vallejo Water Facilities required to convey raw water whether from American Canyon or other sources, treat such raw water to make it potable and transfer such potable water to American Canyon. Based on a maximum day capacity of 1.00 mgd, American Canyon shall be subject to a maximum month capacity of 57.14 acre-feet and a maximum annual capacity of 628.6 acre-feet.

American Canyon shall pay the Connection Fee to Vallejo according to the schedule presented in Exhibit B attached hereto and by this reference made a part hereof. American Canyon may repay the outstanding principal and prorated interest owed on the Connection Fee at anytime prior to the scheduled payment dates, without penalty.

- b. **Service Charges.** On a monthly basis, American Canyon shall pay a service charge for each meter, based upon the meter size, according to Vallejo's rate schedule then in effect for outside-the-City commercial customers. In addition to the monthly meter service charge, American Canyon shall pay a monthly quantity fee for potable water which shall be 1.40 times the rate for inside-the-City commercial customers, according to the Vallejo rate schedule then in effect, per 100 cubic feet (one unit), less \$75 per acre-foot (equal to \$0.17 per unit) for the cost of raw water, to the extent that raw water is supplied by American Canyon. The credit for raw water cost shall be reviewed and modified annually based upon raw water and electric power costs incurred by American Canyon and shall increase at a rate no greater than the percentage increase in cost for Vallejo potable water to American Canyon.

- c. Vallejo and American Canyon agree and understand that together the Connection Fee, Subsequent Connection Fees and monthly service charges shall comprise American Canyon's share of any increased operation and maintenance costs, capital improvement costs, or replacement project costs incurred by Vallejo with respect to that portion of the Vallejo Water Facilities utilized by American Canyon.

- d. **Subsequent Capacity Purchases and Connection Fees.** Vallejo agrees and understands that American Canyon shall have the right to purchase additional capacity from Vallejo upon and continuing from the Effective Date (as defined in Section 31 of this Agreement) of this Agreement. Vallejo shall reserve a total maximum day capacity of 6.25 mgd within its system for American Canyon subject to reduction as provided in this Section 4.d. American Canyon shall have the right to purchase additional maximum day

capacity above the initial maximum day capacity of 1.00 mgd up to a total maximum day capacity of 6.25 mgd. American Canyon's additional maximum day capacity purchases may exceed the volumes in any five-year time period as designated in Exhibit C attached hereto and by reference made a part hereof. If, however, American Canyon fails to buy the maximum day capacity volumes for any five-year period as designated in Exhibit C prior to the expiration of any applicable five-year time period, Vallejo may reduce the total maximum day capacity reserved for American Canyon according to the result of the following formula: At Risk Capacity shall equal volume in each applicable five-year time period as designated in Exhibit C less maximum day capacity purchased by American Canyon in each applicable five-year time period. Vallejo shall notify American Canyon in writing of proposed total maximum day capacity reductions in accordance with Section 24 and American Canyon shall have 180 days after receipt of such notification in which to purchase the At Risk Capacity by payment in full of the applicable connection fee.

American Canyon may purchase maximum day capacity in increments as small as 0.1 mgd. However, Vallejo agrees and understands that American Canyon is not obligated to purchase any capacity in excess of the initial 1.00 mgd maximum day capacity or capacity up to the maximum capacity of 6.25 mgd. American Canyon agrees and understands that its failure to purchase additional capacity within the applicable five-year time periods shall relieve Vallejo from the obligation to reserve such additional capacity within the Vallejo Water Facilities for American Canyon as set forth in this Section 4.d.

For American Canyon's additional capacity purchases, the purchased capacity shall be measured in the increments as set forth in Exhibit D. The subsequent connection fee ("Subsequent Connection Fee") for purchase of additional capacity shall be calculated as set forth in Exhibit D, plus allowance for American Canyon's proportionate share of other capital improvements to the Vallejo Water Facilities where such capital improvements are required to meet standards mandated by state or federal law, rules or regulations. Subsequent Connection Fees incurred during the first six years of this Agreement may, at American Canyon's option, be added to the balance remaining of the initial Connection Fee. In such event, the Subsequent Connection Fee shall bear interest at the same rate as the initial Connection Fee and shall be prorated for payment in equal installments over the years remaining for payment of the initial Connection Fee. In the alternative, and for capacity purchases subsequent to the initial six years of this Agreement, Subsequent Connection Fees equal to or less than \$175,000 shall be paid in their entirety within 120 days from the date of purchase and Subsequent Connection Fees in excess of \$175,000 shall be paid according to a schedule agreed to by the parties, and bear interest at a rate of 6 percent per annum.

If in any month or any year, American Canyon's actual maximum demand exceeds its then purchased maximum capacity demand, Vallejo shall so notify American Canyon in writing in accordance with Section 24. Unless American

Canyon can demonstrate that a mechanical fault temporarily increased its maximum capacity demand during the applicable month or year, American Canyon shall immediately purchase additional maximum day capacity such that its future maximum demand shall be less than or equal to its purchased maximum capacity demand, making payment in full for such new capacity within 120 days of notice from Vallejo.

5. **Billing.** Vallejo shall bill American Canyon monthly for water service charges. All bills shall be payable within thirty (30) days of receipt. Bills shall be deemed received three (3) days after deposit in the United States mail postage prepaid and addressed to American Canyon, Attention: Public Works Department at the address set forth in Section 24 hereof.
6. **Delinquent Accounts.** All bills become delinquent thirty-one days after receipt. Any charge for connection fees or service charges hereunder, which is not paid when due and payable under the terms of this Agreement, shall bear compound interest at the monthly rate of one and one-half percent (1-1/2%) interest until paid. If delinquent bills and interest are not paid within five days after the delinquent date, Vallejo may discontinue service to American Canyon 60 days after Vallejo notifies American Canyon in writing as provided in Section 24 of its intent to discontinue service if American Canyon fails to make arrangements within such 60 day period satisfactory to Vallejo to pay the delinquent account. Disputes regarding delinquent accounts shall be resolved as provided for in Section 12. During dispute resolution, service from Vallejo to American Canyon shall continue.
7. **Flow Monitoring.** In order to implement this Agreement, Vallejo shall, at the connection points of the American Canyon Transmission Facilities to the Vallejo Water Facilities and at any connection points for conveying raw water from Vallejo to American Canyon, install and thereafter maintain at its cost permanent flow monitoring equipment. The equipment shall measure 100 percent (100%) of the water that American Canyon purchases from Vallejo. The monitoring equipment shall have the facilities and equipment necessary to obtain accurate flow data. At Vallejo's sole cost, the flow meters shall be calibrated on a schedule based on the manufacturer's recommended calibration schedule for the meter installed in the station. Either party may request that the flow meters be calibrated more frequently and may arrange for the calibration to be performed at its own cost.

It is understood that American Canyon raw water that is delivered to Vallejo for treatment and transmission to American Canyon shall be measured by the metering system of the raw water purveyor North Bay Aquaduct ("NBA") used by American Canyon.
8. **Water Facilities Connections.** At its own expense American Canyon shall initially install connections with the Vallejo Water Facilities.

The exact locations of such connections shall be as mutually agreed to by Vallejo and American Canyon. At each connection point Vallejo shall install, at American Canyon's expense, a hot tap into an existing main, tee, or other suitable fitting and an isolation valve conforming to Vallejo standards with valve box at ground surface.

For each connection American Canyon shall design or have designed by a professional engineer licensed in California, metering facilities containing isolation valving, space for turbine meter, pressure regulating equipment, and backflow protection. Said facilities shall be located in a below grade vault with suitable access or enclosed above grade area, as mutually agreed to by both parties. Vallejo shall have the right to approve the plans for and inspect the construction and equipping of the facilities. Vallejo shall not unreasonably withhold approval of such plans or of such construction and equipment. American Canyon shall arrange for construction of said metering facilities. Vallejo shall install the water meter at each connection point after American Canyon completes construction.

9. **Water Quality.** Vallejo shall supply water to the connections that meet all applicable state and federal water quality standards and shall be responsible for maintaining water quality and regulatory compliance up to the connections. American Canyon shall remain responsible for monitoring water quality and maintaining regulatory compliance in its system.

If future water quality regulations or other considerations require Vallejo to make major water quality changes in its potable water, such as changing residual disinfectant from free chlorine to chloramines, Vallejo shall notify American Canyon at least eight (8) months prior to such changes so that American Canyon can notify its water customers and make needed changes in the American Canyon Water Facilities.

10. **Water Quality Reporting.** Annually Vallejo shall provide American Canyon with a written report summarizing the quality of water delivered to American Canyon. Said report shall include data on all quality parameters for which reporting is required by federal and state regulations.

If Vallejo encounters any operational problem which may affect the quality or quantity of water delivered to American Canyon, Vallejo shall immediately notify American Canyon of said problem.

11. **Water Delivery Assistance.** Vallejo agrees to assist American Canyon to deliver American Canyon raw water to users in certain areas of the American Canyon water service area in which Vallejo has existing transmission facilities (hereinafter "wheeling").

- a. The point of connection between the American Canyon and Vallejo water systems for wheeling of American Canyon raw water through the Vallejo water system for delivery to users within the American Canyon water service area, the individual service connection points and the method of connection shall be as mutually agreed between the parties. However, it is understood that appropriate metering devices shall be installed to measure and/or control the delivery of American Canyon raw water to the Vallejo water system and the delivery of such water to the ultimate user from the Vallejo water system. American Canyon shall bear all costs associated with establishing the wheeling service connection and the individual service connections.

b. American Canyon shall be responsible for compliance with any and all requirements of any federal, state or local agency to the extent such requirements apply to this wheeling agreement. Vallejo shall not be responsible for any failure to wheel water delivered to the Vallejo water system pursuant to this Section 11 resulting from any cause or event beyond Vallejo's control.

c. It is the express intention of the parties that American Canyon shall reimburse Vallejo for any and all costs incurred by Vallejo in order to wheel water pursuant to this Section 11, including, costs related to amortization of capital costs of the pumping and transmission facilities that are directly related to wheeling water under this Section 11. American Canyon shall not be responsible for any costs that have no relationship to wheeling water pursuant to this Section 11. The parties shall mutually agree upon the criteria to be included in the calculation of such costs. American Canyon shall reimburse such costs through the payment to Vallejo of service charges based on the quantity of water wheeled, calculated on a unit cost basis. Whenever water is being wheeled pursuant to this Section 11, Vallejo shall submit a bill to American Canyon on a monthly or bimonthly basis for the service charges attributable to the quantity of water wheeled during the immediately preceding billing period, and American Canyon shall pay such service charges in accordance with Section 5 of this Agreement.

d. American Canyon shall be responsible for obtaining and delivering to the Vallejo water system any raw water which is to be transmitted and delivered pursuant to this Section 11. However, in recognition of American Canyon's desire to establish an alternate source of raw water to supply water for agricultural, golf course and landscaping purposes, both parties agree to engage in good faith negotiations to establish the terms and conditions upon which Vallejo would supply and convey raw water to American Canyon for such purposes.

12. **Fact Finding And Arbitration.** Either party may request that a controversy or claim arising out of or relating to the performance of this Agreement be submitted to a mutually agreed upon fact finder. Said fact finder shall examine and consider the issue submitted to him or her, including all data or information submitted by each party and other information he or she may determine to be relevant. He or she shall, thereafter, render to each party a report upon the facts and/or issue submitted to him or her, together with such recommendations as he or she shall see fit to make. All expenses of the fact finder shall be shared equally by American Canyon and Vallejo.

If the report of the fact finder is not acceptable to either party or if a fact finder cannot be agreed upon, either party may thereafter determine that the issue be submitted to arbitration. The arbitration panel shall consist of one representative chosen by each party and a third member chosen by the parties' representatives. Said third member shall serve as chairperson of the arbitration panel. Said third member must be selected from a list of arbitrators certified by the American

Arbitration Association to conduct such arbitrations. In the event the two designated arbitrators cannot agree upon the third person within ten (10) calendar days of the demand for arbitration, either party may request the American Arbitration Association to appoint an impartial arbitrator to act as chairperson in accordance with its then applicable rules and regulations. Upon selection of the arbitration panel, the matter shall be set for arbitration at a time not less than thirty (30) days nor more than ninety (90) days from the effective date of the appointment of the panel. The arbitration shall be conducted under the procedures set forth in Chapter 3, Section 1280, et seq., of Title 9 of Part 3 of the Code of Civil Procedure, or under such other procedures as are agreeable to both parties, except that provisions of the Code of Civil Procedure pertaining to discovery and the provisions of the Evidence Code shall be applicable to such proceeding. The panel shall consider the fact finder's report and any other information submitted by the parties or determined by the panel to be relevant. The panel may call such witnesses as it deems necessary. The panel shall provide to each party a written statement of decision and the reasons supporting the decision. The decision of the panel shall be final and binding upon the parties. The expenses of the panel shall be shared equally by the parties. Each party shall make arrangements for, and pay the expenses of its own witnesses. The determination of the arbitrators shall be conclusive subject to vacation or correction solely on the basis set forth in Code of Civil Procedure Sections 1286.2 and 1286.6.

13. Insurance.

- a. American Canyon shall assume all responsibility for damage to property or injuries to persons caused by any operation, activity, or work performed by American Canyon pursuant to this Agreement. American Canyon shall procure and maintain for the duration of this Agreement insurance against all claims from injuries to persons or damages to property which may arise from or in connection with the operation of the American Canyon Water Facilities and Transmission Facilities system and the performance of the work hereunder by American Canyon. Such insurance shall not be construed to relieve American Canyon of any liability in excess of such coverages.

General liability coverage shall be at least as broad as a standard Insurance Services Office commercial general liability policy. Auto liability coverage shall be at least as broad as the standard Insurance Services Office California auto liability coverage form. Workers' Compensation coverage shall be as required by the laws of the State of California. Insurance coverage may be provided through a self-insured reserve and a joint powers insurance authority formed pursuant to the laws of the State of California.

Liability limits shall be no less than follows:

General Liability: \$5,000,000 per occurrence for bodily injury, personal injury, and property damage. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. Workers' Compensation (Coverage A): \$5,000,000 or statutory limits; Employer's Liability (Coverage B): \$1,000,000 per accident for bodily injury or disease.

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions: Vallejo, its officers, officials, employees, agents, and volunteers are to be covered as insured as respects the general liability/automobile liability insurance required above.

For any claims related to this Agreement, American Canyon's insurance coverage shall be primary insurance as respects Vallejo, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by Vallejo, its officers, officials, employees, agents, or volunteers shall be excess of American Canyon's insurance and shall not contribute with it.

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Vallejo, its officers, officials, employees, agents, or volunteers.

American Canyon's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

American Canyon shall furnish Vallejo with original endorsements effecting coverage required by this section evidencing that coverage is continuous during this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. As an alternative to providing endorsements, American Canyon's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these insurance requirements.

Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or limits, except after thirty (30) days' prior written notice has been given to Vallejo.

- b. Vallejo shall assume all responsibility for damage to property or injuries to persons caused by any operation, activity, or work performed by Vallejo pursuant to this Agreement. Vallejo shall procure and maintain for the duration of this Agreement insurance against claims from injuries or damages to property which may arise from or in connection with the operation of the Vallejo Water Facilities and the performance of the work hereunder by Vallejo. Such insurance shall not be construed to relieve Vallejo of any liability in excess of such coverages.

General liability coverage shall be at least as broad as a standard Insurance Services Offices commercial general liability policy. Auto liability coverage shall be at least as broad as the standard Insurance Services Office California auto liability coverage form. Workers' Compensation coverage shall be as required by the laws of the State of California. Insurance coverage may be

expenses) resulting from or arising out of Vallejo's activities with respect to its operation of the Vallejo Water Facilities and/or performance of its responsibilities hereunder. Neither American Canyon nor its officers, employees or agents shall be liable to Vallejo for any judgment, claim, liability, loss, cost, damage or expenses whatsoever suffered in connection with the Vallejo's operation of the Vallejo Water Facilities and/or performance of its responsibilities hereunder, it being acknowledged that American Canyon has no control over the Vallejo Water Facilities.

b. American Canyon shall defend, indemnify, and hold Vallejo and its officers, employees and agents harmless from any and all judgments, claims, liabilities, losses, costs, damages and expenses whatsoever (including attorneys' fees and expenses) resulting from or arising out of American Canyon's activities with respect to its operation of the American Canyon Transmission Facilities and Water Facilities and/or performance of its responsibilities hereunder. Neither Vallejo nor its officers, employees, or agents shall be liable to American Canyon for any judgment, claim, liability, loss, cost, damage or expenses whatsoever suffered in connection with the American Canyon's operation of the American Canyon Transmission Facilities and Water Facilities and/or performance of its responsibilities hereunder, it being acknowledged that Vallejo is providing a potable water source and transmission facilities to American Canyon and has no control over American Canyon Transmission and Water Facilities.

15. **Force Majeure.** In the event the performance by either of the parties of its obligations under this Agreement is substantially interrupted by labor disputes, war, fire, earthquake, insurrection, riots, act of God, or without limiting the foregoing, any other cause beyond the control of the nonperforming party, that party shall be relieved of its obligations hereunder as to all services and performances affected by the event for the duration of such interruption. In the event of any material change in any of the laws and/or regulations pertaining to the treatment and/or standards of quality for potable water rendering performance of the Agreement impossible or impracticable, either party may request a renegotiation of the part or parts of the Agreement affected by such change. If such request is not honored, the matter shall be resolved by fact finding and/or arbitration pursuant to the provisions of Section 12 of this Agreement.
16. **Termination.** This Agreement shall continue in effect until mutually terminated by American Canyon and Vallejo. In the event the parties are unable to reach a mutually satisfactory termination agreement, the matter shall be referred to a fact-finder and/or arbitration panel pursuant to Section 12 of this Agreement.
17. **Entire Agreement.** This Agreement, including the attached Exhibit A through D, contains the entire agreement of the parties and supersedes all prior negotiations, correspondence, understandings and agreements by or between the parties regarding the subject matter hereof.
18. **Amendment.** This Agreement may be amended, altered or supplemented only upon the mutual written consent of the parties.

19. **Successors And Assigns.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, permitted assigns, and governing bodies.
20. **Assignment.** Neither this Agreement, nor any duties or obligations under this Agreement shall be assigned by either party without the prior written consent of the other, which consent may not be unreasonably withheld.
21. **Governing Law.** This Agreement shall be governed by the laws of the State of California and the rights and obligations of the parties hereto shall be construed and enforced in accordance with the laws of the State of California.
22. **Interpretation.** It is agreed and understood by the parties hereto, that each party has been assisted by counsel in the negotiation and drafting of this Agreement and that each party has cooperated in the preparation of this Agreement. This Agreement shall be construed according to its fair language and the normal rules of construction, but the rule of construction as set forth in California Civil Code Section 1654, that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
23. **Attorneys' Fees.** In the event of any legal or equitable proceedings for enforcement of any of the terms of this Agreement, or any alleged dispute, breaches, default or misrepresentations in connection with any provision of this Agreement, the prevailing party in such action, or the nondismissing party where the dismissal occurs other than by reason of a settlement, shall be entitled to recover its reasonable costs and expenses, including without limitation, reasonable attorneys' fees and costs of defense paid or incurred in good faith. The "prevailing party" for purposes of this Agreement shall be deemed to be the party who obtains substantially the result sought, whether by settlement, dismissal or judgment. This provision shall not apply to any fact finding or arbitration proceeding initiated pursuant to Section 12 hereof and each party shall bear its own attorneys' fees and costs in any such proceeding.
24. **Notice.** Any notice relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or three (3) business days after deposit in the United States mail, certified or registered, return receipt requested with postage prepaid addressed as follows:

To American Canyon:

City of American Canyon
2185 Elliott Drive
American Canyon, California 94589-1331
Attention: City Manager

With copy to:

William D. Ross, Esq.
Law Offices of William D. Ross
A Professional Corporation
520 South Grand Avenue, Suite 300
Los Angeles, California 90071

To Vallejo:

City of Vallejo
555 Santa Clara Street
Vallejo, California 94590
Attention: City Manager

With copy to:

City of Vallejo
555 Santa Clara Street
Vallejo, California 94590
Attention: Public Works Director

Either party may change its address by written notice to the other given in the manner set forth above.

25. **Waiver.** Any waiver at any time by any party hereto of its rights with respect to default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to other default or matter.
26. **No Third Party Beneficiary.** The only parties to this Agreement are American Canyon and Vallejo and their respective successors-in-interest and permitted assignees. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.
27. **Cooperation In The Event Of Legal Challenge.** In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity or any provision of this Agreement, the parties hereby agree to affirmatively cooperate in defending said action, each party bearing its attorneys' fees and costs.
28. **Severability.** If any term, provision, condition or covenant of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
29. **Cooperation In Implementing Agreement.** Each party shall execute such other and further certificates, instruments and other documents, provide all such information and take or refrain from taking all such action as may be necessary and proper to implement, complete and perfect the transactions contemplated by this Agreement. The parties further agree that each shall cooperate with the other to obtain any

governmental authorizations, permits, licenses or agreements necessary to implement this Agreement. In this regard, Vallejo agrees to use its best efforts to assist American Canyon to obtain the necessary right-of-ways through American Canyon or Vallejo for the American Canyon Transmission Facilities.

30. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement consists of fifteen (15) pages and four (4) exhibits, which constitute the entire understanding and agreement of the parties.
31. **Effective Date.** This Agreement shall become effective as of the date first above written ("Effective Date") and shall remain in full force and effect until amended or terminated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, as duly authorized by their respective legislative bodies and have caused their official seals to be affixed hereto with the intent to be bound thereby, as of the date first above written.

"Vallejo"

CITY OF VALLEJO

Dated: June 13, 1996

By: Walter V. Graham
Walter V. Graham
City Manager

ATTEST:

Alison Villarante
Alison Villarante
City Clerk
City of Vallejo

"American Canyon"

CITY OF AMERICAN CANYON

Dated: MAY 3, 1996

By: Ralph Freedman
Ralph Freedman,
City Manager

ATTEST:

William D. Ross
Deputy City Clerk

APPROVED AS TO FORM:

By: John M. Powers
John M. Powers, Esq.
City Attorney
City of Vallejo

LAW OFFICES OF WILLIAM D. ROSS
A Professional Corporation

By: William D. Ross
William D. Ross, Esq.
City Attorney
City of American Canyon

APPROVED AS TO CONTENT:

By: John H. Duane
John H. Duane
Public Works Director
City of Vallejo

APPROVED AS TO INSURANCE
REQUIREMENTS

By: David J. Lindquist
David J. Lindquist
Risk Manager
City of Vallejo

EXHIBIT A

[MAP]


ATTEST:


Deputy City Clerk

APPROVED AS TO FORM:

By: 
John M. Power, Esq.
City Attorney
City of Vallejo


LAW OFFICES OF WILLIAM D. ROSS
A Professional Corporation

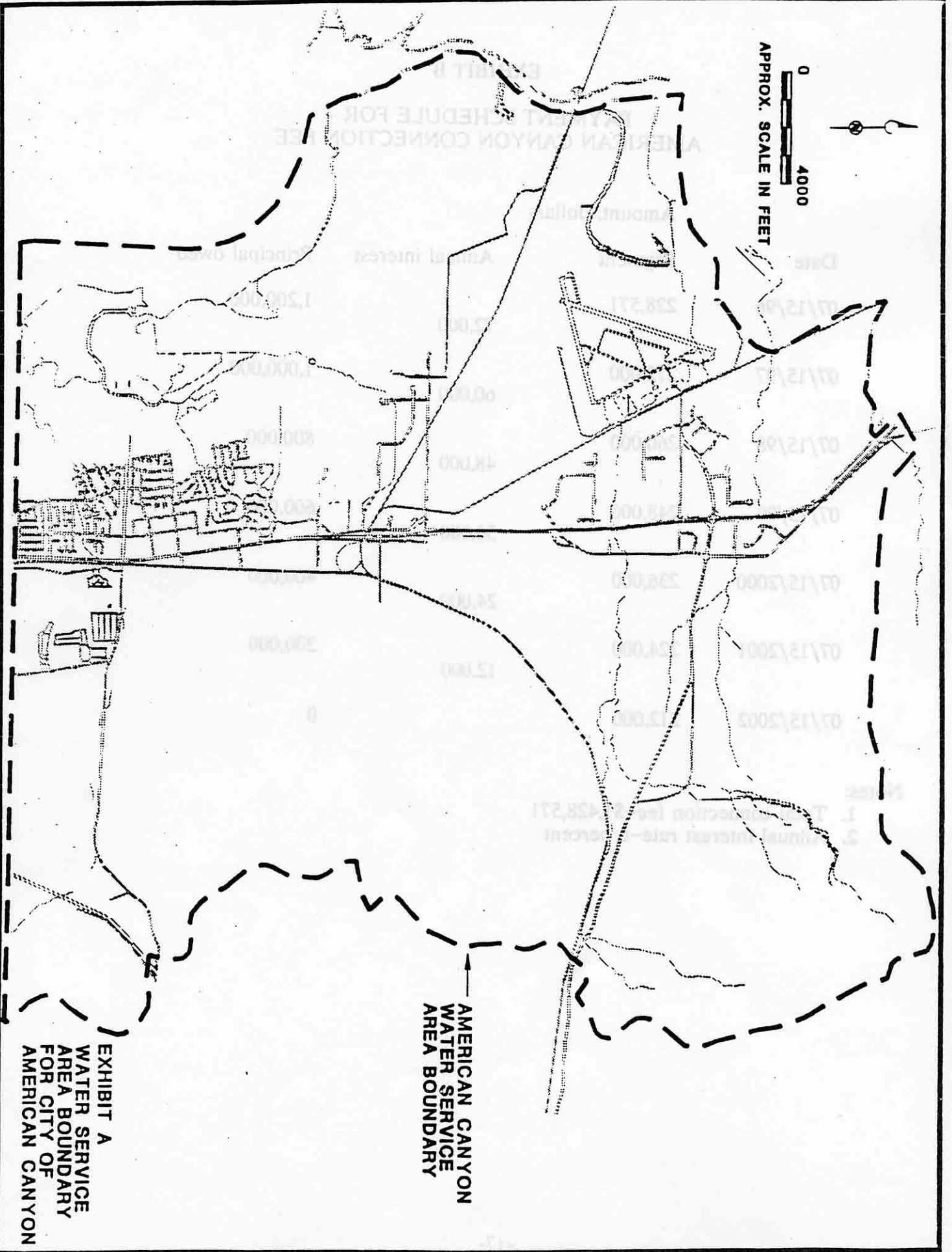
By: 
William D. Ross, Esq.
City Attorney
City of American Canyon

APPROVED AS TO INSURANCE
REQUIREMENTS

By: 
David J. Lindquist
Risk Manager
City of Vallejo

APPROVED AS TO CONTENT:

By: 
John H. Duane
Public Works Director
City of Vallejo



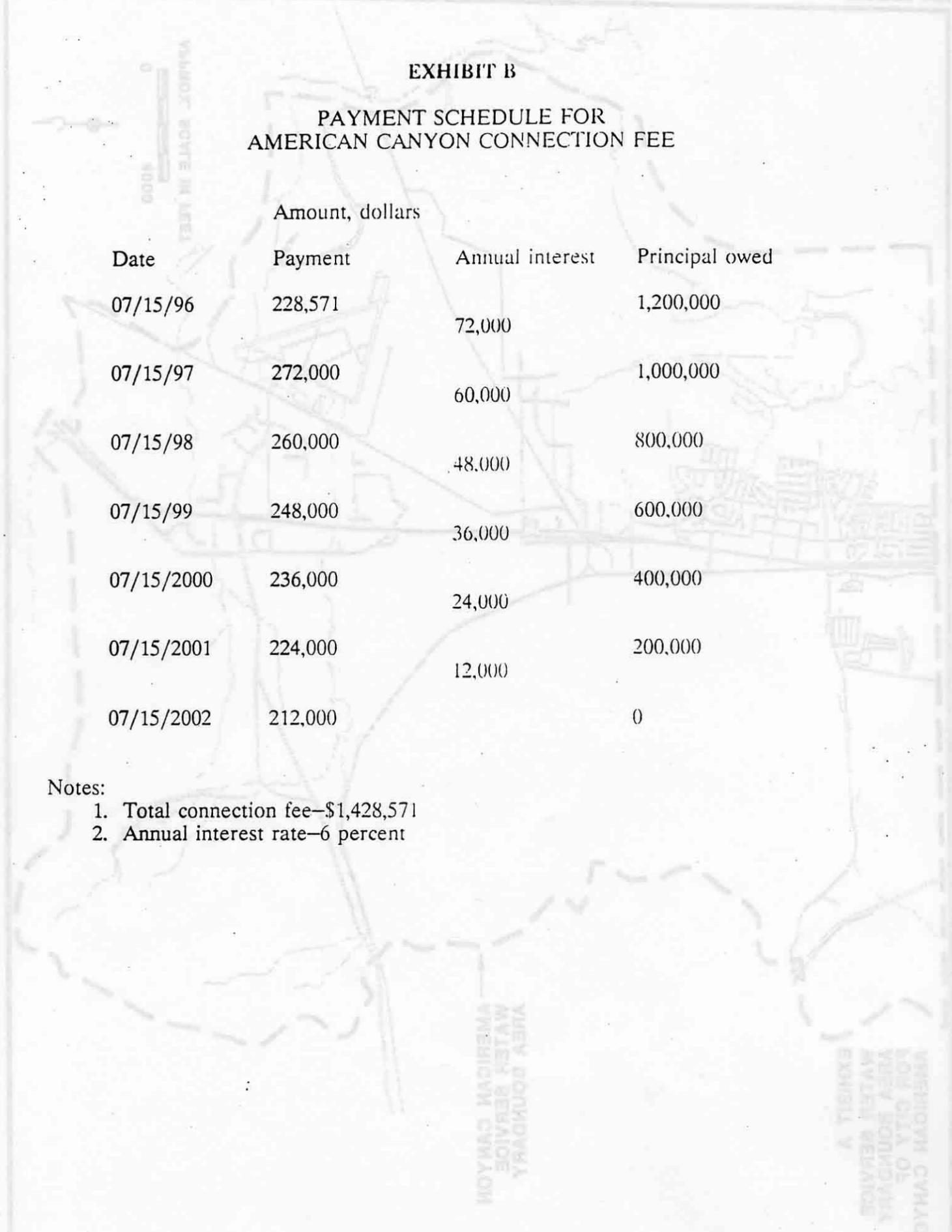



EXHIBIT B

PAYMENT SCHEDULE FOR
AMERICAN CANYON CONNECTION FEE



Amount, dollars			
Date	Payment	Annual interest	Principal owed
07/15/96	228,571	72,000	1,200,000
07/15/97	272,000	60,000	1,000,000
07/15/98	260,000	48,000	800,000
07/15/99	248,000	36,000	600,000
07/15/2000	236,000	24,000	400,000
07/15/2001	224,000	12,000	200,000
07/15/2002	212,000	0	0

Notes:

1. Total connection fee—\$1,428,571
2. Annual interest rate—6 percent

EXHIBIT C

VOLUME OPTION

Option	Time period	Cumulative option capacity for time period, million gallons per maximum day
1	1996-2001	1.15
2	2002-2006	1.15
3	2007-2011	1.15
4	2012-2016	0.9
5	2017-2021	0.9

Note: A maximum day capacity of 0.1 mgd is equivalent to a maximum month capacity of 5.71 acre-feet and to a maximum annual capacity of 62.86 acre-feet. Thus, if American Canyon purchases 1.0 mgd of additional maximum day capacity, its maximum month capacity shall increase by 57.14 acre-feet and its maximum annual capacity shall increase by 628.6 acre-feet.

EXHIBIT D

CITY OF VALLEJO POTABLE WATER SERVICE TO CITY OF AMERICAN CANYON

SUBSEQUENT CONNECTIONS CAPACITY AND FEE

Minimum Supply Increment

Service condition	Units	Quantity
Maximum day delivery	million gallons per day (mgd)	0.1
Maximum month delivery	acre-feet	5.714
Maximum annual delivery	acre-feet	62.86

Connection Fee

At initial contract execution, connection fee payment per 0.1 mgd
maximum day capacity = \$142,857

Note: For capacity purchased after initial contract execution, connection fee shall be as follows:

$$\text{Connection fee per 0.1 mgd capacity} = \$142,857 \times [A \div B]$$

Where A = ENR Construction Cost Index for San Francisco Bay Area from ENR magazine from quarter most recently preceeding date of capacity purchase

B = ENR construction cost index for San Francisco Bay area for July 1, 1996

ASSOCIATION OF BAY AREA GOVERNMENTS

ABAG PLAN Corporation

P.O. Box 2050

Oakland, CA 94604-2050

(510) 464-7969

**THIS ENDORSEMENT CHANGES THE CONTRACT.
PLEASE READ IT CAREFULLY.
ADDITIONAL COVERED ENTITY**

Endorsement effective: July 1, 1996 through June 30, 1997

Providee: City of American Canyon

Additional Covered Entity: City of Vallejo

Address: 555 Santa Clara Street
Vallejo, CA 94590-5934

Description of operation:

It is hereby understood and agreed that the City of American Canyon does provide proof of general liability insurance and auto insurance in compliance with the Water Service Agreement between the City of Vallejo and the City of American Canyon dated May 1, 1996. The City of Vallejo is hereby named as an additional insured on said Water Service Agreement in conformance with the provisions of said agreement.


COVERAGES:

LIABILITY:

- Bodily injury and property damage
- Public officials errors and omissions
- Automobile liability

LIMIT OF LIABILITY : \$5,000,000

The contract is amended to include coverage for the Additionally Covered Entity with respect to their liability for activities of the Providee or for activities performed by the Covered Entity for such Providee or on its behalf, but only to the extent of their liability.


Authorized Signature - Albert T. Fierro, Vice President

COPY

**ADDENDUM NO. 1 TO THE WATER SERVICE AGREEMENT
BETWEEN THE CITY OF VALLEJO AND
THE CITY OF AMERICAN CANYON**

This Addendum No. 1 to the Water Service Agreement ("Addendum") dated as of the 18th day of JULY, 1996, is made by and between the City of Vallejo, a chartered city located in the County of Solano, State of California ("Vallejo") and the City of American Canyon, a municipal corporation located in the County of Napa, State of California ("American Canyon").

RECITALS

WHEREAS, Vallejo and American Canyon have entered into that certain Water Service Agreement, dated as of May 2, 1996 (the "Agreement") whereby Vallejo agreed to sell American Canyon a permanent supply of potable water, to treat American Canyon excess raw water, and to provide facilities to transmit American Canyon water to certain areas within the American Canyon Water Service area according to the terms and conditions set forth in the Agreement; and,

WHEREAS, the Agreement provides in Section 11.d. that in recognition of American Canyon's desire to establish an alternate source of raw water to supply water for agricultural, golf course and landscaping purposes, both parties would engage in good faith negotiations to establish the terms and conditions upon which Vallejo would supply and convey raw water to American Canyon for such purposes; and,

WHEREAS, the parties have engaged in such good faith negotiations and have established the terms and conditions upon which Vallejo would supply and convey raw water to American Canyon for agricultural, golf course and landscaping purposes and wish to set forth their mutual agreement as to those terms and conditions in this Addendum.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained it is agreed that:

AGREEMENT

1. Purchase of Raw Water.

A. Upon construction by American Canyon, at its sole cost, of the

COPY

wheeling service connection (as defined in Section 11 of the Agreement), Vallejo agrees to sell raw water to American Canyon during emergencies in quantities up to five hundred (500) acre feet per year. Vallejo shall only sell raw water to American Canyon when American Canyon's North Bay Aqueduct entitlement is reduced due to environmental or other constraints, (such reduction shall be an emergency hereunder). The parties acknowledge that Vallejo's ability to provide emergency raw water and the foregoing covenant to provide such water are dependent upon the water quantities available to Vallejo when such environmental or other constraints are in effect.

2. Water Rates and Charges.

When American Canyon purchases raw water from Vallejo for agricultural, landscaping and/or golf course purposes, American Canyon shall pay Vallejo for such raw water at a rate equal to ninety percent (90%) of American Canyon's then current rate for American Canyon raw water as charged to American Canyon outside the city customers.

3. Vallejo's Water Rights Issues.

If the sale of raw water by Vallejo to American Canyon for agricultural use conflicts with State or Federal law or the terms and conditions of Vallejo's permit water, Vallejo shall not be obligated to deliver raw water to American Canyon for agricultural use. However, notwithstanding the foregoing, Vallejo agrees to use its best efforts to contact the appropriate State or Federal agencies and to seek modification of its water rights to allow for delivery of raw water to American Canyon for agricultural use. Vallejo agrees to promptly initiate such action and to inform American Canyon of its efforts to modify such permits if such modification is deemed necessary, unless such action is not in the best interest of Vallejo.

4. Effect of Addendum.

This Addendum is intended to add supplemental terms to the Agreement and does not in any way affect or modify the terms and conditions of the Agreement which shall remain in full force and effect. This Addendum shall be a part of and subject to all the terms and conditions of the Agreement.

5. Effective Date.

This Addendum shall become effective as of the date first above written.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their respective officers, as duly authorized by their respective legislative bodies and have caused their official seals to be affixed hereto with the intent to be bound thereby as of the date first above written.

Dated: November 12, 1996

ATTEST:

By: 

Allison Villarante, City Clerk
City of Vallejo

"Vallejo"

CITY OF VALLEJO

By: 

KENNETH R. CAMPO
City Manager

"American Canyon"

CITY OF AMERICAN CANYON

By: 

MARK JOSEPH
Acting City Manager

ATTEST:

By: 

Millett Thomas, Deputy City Clerk
City of American Canyon

APPROVED AS TO FORM:

By: 

John M. Powers, Esq.
City Attorney
City of Vallejo


APPROVED AS TO FORM:

LAW OFFICES OF WILLIAM D. ROSS
A Professional Corporation


By: 

Myra Prestidge
Assistant City Attorney
City of American Canyon

APPROVED AS TO CONTENT:

By: 
John H. Duane
Public Works Director
City of Vallejo

APPROVED AS TO INSURANCE
REQUIREMENTS: *file*

By: 
David J. Lindquist
Risk Manager
City of Vallejo

Dated: November 12, 1998

ATTEST:


By: 
Allison Villanueva, City Clerk
City of Vallejo

"American Canyon"

CITY OF AMERICAN CANYON


By: 
MARK JOSEPH
Acting City Manager

ATTEST:

By: 
Miller Thomas, Deputy City Clerk
City of American Canyon

APPROVED AS TO FORM:

LAW OFFICES OF WILLIAM D. ROSS
A Professional Corporation

By: 
Wm D. Ross
Assistant City Attorney
City of American Canyon

APPROVED AS TO FORM:

By: 
John Powers, Esq.
City Attorney
City of Vallejo

AGREEMENT DISSOLVING

JOINT POWERS AUTHORITY

THIS AGREEMENT is made as of the date upon which it is executed, by and between NAPA SANITATION DISTRICT, a special district duly organized under the laws of the State of California ("Napa") and the CITY OF AMERICAN CANYON, a municipal corporation ("American") and is as follows:

R E C I T A L S:

A. Napa and the American Canyon County Water District, a local agency which was dissolved upon the incorporation of American, and to whose rights and liabilities American succeeded, entered into an Amended and Restated Joint Exercise of Powers Agreement, as of September 25, 1991 ("Joint Powers Agreement");

B. The Joint Powers Agreement, among other matters, established the terms and conditions by which Napa and American manage wastewater treatment facilities owned by the Napa-American Canyon Wastewater Management Authority ("NAC"), the entity created by the Joint Powers Agreement, with such terms and conditions as are stated therein;

C. The Joint Powers Agreement, and all provisions therein, are specifically referred to and incorporated herein by reference;

D. Napa and American now desire to dissolve the Joint Powers Agreement, pursuant to the terms and conditions set forth in this Agreement.

D E F I N I T I O N S:

A. "Chardonnay Golf Facilities" shall mean the Chardonnay Golf Course which is that 461 acre facility located south of, and adjacent to, State Highway 12 (more commonly known as Jameson Canyon Road) and east of South Kelly Road. It consists of a 36 hole golf course consisting of approximately 250 acres, a portion of which is north and a portion of which is south of Fagan Creek, a clubhouse, appurtenances, and vineyard, the latter of which occupies approximately 140 acres of irrigated land.

B. "Control Authority" shall mean the Napa Sanitation District.

C. "Effective Date" shall mean September 30, 1993.

D. "Industrial Discharger" shall mean a source of discharge to the public sanitary sewer system from any nondomestic source as regulated under Section 307(b), (c) or (d) of the Federal Clean Water Act.

E. "Napa Industrial Trunk No. 2" shall mean the sanitary sewer which runs along the eastern side of the Southern Pacific Railroad, and extends southerly from the southwestern portion of the Somky Recycling Site, to the County Road commonly known as Airport Road.

F. "1995 Project" shall mean the project contemplated for construction, with completion in 1995, by the Napa/American Wastewater Management Authority Board, which plans were entitled "Specifications and Contract Documents for WATER RECYCLING FACILITY 1993 EXPANSION" as designated by John Carollo Engineers, including any amendments thereto up to the Effective Date, copies of which are on file in the administrative office of the Napa Sanitation District.

G. "NSD v. Kirkland" shall mean that litigation as defined in Section 19 of the Joint Powers Agreement.

H. "POTW" shall mean Public Owned Treatment Works, a public water facility which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

I. "Significant Industrial User (SIU)" shall mean all Industrial Users ("IUs") subject to categorical pretreatment standards under 40 C.F.R. 403.6 and 40 C.F.R. Chapter I, Subchapter N; and any noncategorical Industrial User that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW; or contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority on the basis that the IU has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

A G R E E M E N T:

1. Dissolution. Napa and American hereby dissolve the Joint Powers Agreement as of the Effective Date. It is the intent of the parties that American shall have no financial responsibility for the 1995 Project thereafter; provided, however, the parties confirm that up to and including the Effective Date of this Agreement, American shall have financial responsibility for the 1995 Project, all costs and actions undertaken, and all obligations incurred therein. Napa shall provide continuing wastewater treatment services as required by American, consistent with the provisions of paragraph 2, below.

2. Wastewater Treatment Services.

(a) As of the Effective Date of this Agreement, Napa shall provide wastewater treatment for American for a period of three years. Two one year options to extend service, as described below, in (b) and (c) are available to American. If, before 36 months expires, American determines to continue receiving services from Napa for more than 60 months, then the options are null and void, and subparagraph (d) is invoked.

During the three year period, the service fee and operations and maintenance costs chargeable to American shall be calculated pursuant to Exhibits "X-1" and "X-2" respectively, referred to and incorporated herein by reference. American understands that the current equivalent dwelling unit (EDU) loading for American, based upon October 1992 to September 1993 NAC records is 2,733 EDU. Table U, referred to and incorporated herein by reference, contains these EDU calculations. The EDU loading from American shall be determined by Napa, for each month during all periods when American is exercising its rights under this paragraph. During the three year period, and the two one year option periods, if exercised, American shall be restricted to a maximum dry weather flow of 1.54 MGD, and a maximum daily ~~BOD~~ load of 1,245 pounds. If American exceeds the loading above referenced, it shall, within 30 days, take whatever steps are necessary to reduce the loading to the levels above specified. American agrees to comply with all terms of Napa's Ordinances, Regulations, and

Guidelines, including but not limited to, Ordinance 67, and all revisions and amendments thereto during the course of the entire five year period.

(b) If American is not separated from Napa by the end of the 36th month of this Agreement, but intends to separate on or before the end of the 48th month, then the conditions set forth in this subparagraph shall prevail. Such notice to continue shall be given by American to Napa, in writing, consistent with this Agreement, prior to the end of the 32nd month of wastewater treatment by Napa. During the fourth year (i.e. months 37 to 48 of this Agreement) the service fee and the operations and maintenance costs shall be calculated as in subparagraph (a) above, but shall include a 20% surcharge on all fees and costs. American recognizes that the 20% surcharge is to provide a ramping of costs toward the cost of service, for an Industrial Discharger, with American classified as a Significant Industrial User.

In the event that American exercises its option to extend service beyond 36 months of this Agreement, it shall at its sole cost and responsibility construct improvements to allow diversion of discharge of its wastewater from the Soscol Ponds to the Napa Industrial Trunk #2, at a point north of Airport Road, as directed by Napa. Exhibit V, referred to and incorporated herein by reference, depicts the location of the point of diversion. Valving shall be installed at the point of diversion so that Napa can direct American's wastewater to either the Soscol Ponds or into the Trunk line. Such diversion shall occur prior to the end of the 36th month. If American does not comply with this diversion requirement by the end of the 36th month of this Agreement, then American agrees that Napa shall construct these facilities and bill American for costs incurred consistent with paragraph 2(g).

(c) During months 49 to 60 of temporary wastewater treatment pursuant to this Agreement, the service fee operations and maintenance cost for American shall be calculated as if American were just another Industrial Discharger, and classified as a Significant Industrial User. Monthly sewer service charges

shall be calculated per the then current Ordinance 67, Section 805.00, "Industrial Waste Charges." To exercise this second one year option, American shall notify Napa prior to the end of the 44th month.

(d) If American is not physically disconnected from the Napa system in all respects by either the 37th, 49th or 61st month of this Agreement, depending upon which option is selected by American and as allowed by and consistent with the options provided for herein, then American shall become immediately liable for and subject to all Fees and Charges consistent with duly adopted Napa Ordinances, Regulations and Guidelines. Such Fees and Charges shall be assessed by Napa and shall be paid by American. Prior to the first day of the 38th, 50th, or 62nd month, depending upon which option is selected by American and as allowed by the consistent with the options provided for herein, American shall pay to Napa connection fees.

The connection fees shall be calculated by multiplying Napa's then effective connection fee by American's EDU's calculated for the average of the immediately preceding 12 month period. Such EDU count shall be determined consistent with Table U. Napa shall continue to monitor American's EDU's on a continuing basis. Thereafter, so long as American discharges to Napa, American shall annually pay additional connection fees consistent with Table U any time the subsequent 12-month loadings exceed the previous loadings for the same 12-month period.

Additionally, American shall bear the responsibility of constructing an extended diversion pipeline termed Industrial Trunk #3, which redirects its flow from its force main, at the point of diversion described in subparagraph (b) above, to Napa's intake pumping station, located about 1,000 feet north of the Soscol Facility administrative office. This construction shall be completed by the last day of the 66th month. If American does not comply with this diversion requirement by the end of the 66th month, then American agrees that Napa shall construct these facilities and bill American for fees and costs incurred, consistent with paragraph 2(g).

Sewer service charges shall also be paid by American to Napa per Ordinance 67.

(e) Agencies or political subdivisions of the United States and the State of California control and regulate the operation of Napa. To the extent that these agencies impose by way of regulation, or other applicable law, additional obligations or duties on Napa which are also applicable to users of Napa, American agrees to timely comply with such changes in regulation or other applicable law.

(f) The existing metering station on American's force main shall remain the property of American. American shall be required to maintain this station, at its own expense, so as to provide Napa with the means to monitor American's discharge to Napa consistent with Ordinance 67.

(g) Bills for the fees and charges referred to in (a), (b), (c) and (d) above, shall be invoiced by Napa to American on a monthly basis. All bills are due and payable by American within thirty (30) days of the date of the invoice. Late fees shall be collected on bills more than thirty (30) days in arrears. The monthly late fees so charged shall be at the rate of one and one-half (1.5) percent of the amount outstanding.

3. Recycled Water Application Areas. As American and Napa each increase their levels of sewer service, each will need additional areas where the treated effluent resulting from such sewer service can be sold as recycled water and applied to beneficial use. It is the intent of this Agreement for Napa not to impair American's ability to sell recycled water for use in American's Recycled Water Application Area, and for American not to impair Napa's ability to sell recycled water for use in Napa's Recycled Water Application Area.

To further this intent and the state water policies embodied in Article 7 of Chapter 7 of Division 7 (commencing with Section 13550) of the Water Code and other similar provisions of law:

(a) Napa waives all claims against American for:

(i) damages based on lost water-sale revenues or lost opportunities to sell water or provide water service; and

(ii) compensation for any of its property employed in providing water service being reduced in value or rendered useless;

that arise as a result of American's sale and delivery of recycled water for use in American's Recycled Water Application Area, whether such claims are based on Public Utilities Code Section 1505.5 or on any other provision of law; and

(b) American waives all claims against Napa for:

(i) damages based on lost water-sale revenues or lost opportunities to sell water or provide water service; and

(ii) compensation for any of its property employed in providing water service being reduced in value or rendered useless;

that arise as a result of Napa's sale and delivery of recycled water for use in Napa's Recycled Water Application Area, whether such claims are based on Public Utilities Code Section 1505.5 or on any other provision of law.

For the purposes of this paragraph 3, all lands south of the centerline of Fagan Creek, except for the lands specifically listed later in this sentence, are defined as "American's Recycled Water Application Area;" and all lands north of the centerline of Fagan Creek, and all lands south of the centerline of Fagan Creek that are: (i) presently owned by Napa County for its Airport Operations, or (ii) are part of the Chardonnay Golf Facilities, are collectively defined as "Napa's Recycled Water Application Area." Such areas are described on Exhibits "Y-1" and "Y-2," attached hereto and incorporated herein by reference.

The "centerline of Fagan Creek" is defined as the thread of Fagan Creek, beginning at its intersection with the east bank of the Napa River, thence easterly along said thread to its intersection with the centerline of State Highway 12, more commonly known as Jameson Canyon Road, thence easterly along said centerline to the Napa-Solano County line. The approximate location of Fagan Creek is shown on the USGS quad map, entitled "Cuttings Wharf, California" and "Cordelia, California."

4. Sewer Service Areas. American agrees not to initiate any request or application for amendment of its sphere of influence to include, or any concurrent or subsequent request for annexation of, any lands within Napa's Recycled Water Disposal Area (defined in paragraph 3 of this Agreement) for sewer service.

Napa Agrees not to initiate any request or application for amendment of its sphere of influence to include, or any concurrent or subsequent request for annexation of, any lands within American's Recycled Water Disposal Area (defined in paragraph 3 of this Agreement) for sewer service.

5. Valuation of American's Interest. Acting pursuant to paragraph 39 of the Joint Powers Agreement, the parties agree to meet and confer on no fewer than two occasions between February 22 and March 9, 1994, and to bargain in good faith regarding the valuation of American's interest in the Joint Powers Authority. If agreement is reached on valuation of American's interest as a result of such meetings, it shall be reduced to writing and such agreement shall be final and binding upon the parties. If the parties are unable to reach agreement on the valuation of American's interest in the Joint Powers Authority, the parties agree to submit such valuation to binding arbitration. The parties shall appoint the Honorable Thomas E. Kongsgaard, Judge of the Superior Court, Retired, as a judicial arbitrator available through the Judicial Arbitration and Mediation Service ("JAMS"). The arbitrator shall in his discretion select independent sanitary engineer(s), financial consultant(s), and/or appraiser(s) among the parties specified on Exhibits "Z-1," "Z-2," and "Z-3," attached hereto and incorporated herein by reference. The parties may present whatever other testimony or evidence they and the arbitrator deem relevant, but no further expert testimony shall be permitted, other than testimony of those experts who had been retained by either party prior to February 25, 1994. The parties shall exchange a witness list with curricula vitae, a written abstract of proposed testimony, and copies of all written reports prepared by any expert witness, two weeks before the arbitration date. The decision of the arbitrator shall be final and binding

upon the parties hereto, who waive their right to seek whatever judicial review of this decision would otherwise be available to them. The arbitrator shall render his or her decision as soon as possible but in any event not later than April 15, 1994. His deliberations shall be in conformity with the Joint Powers Agreement, and in particular with paragraph 39 thereof and with California Code of Civil Procedures Section 1280, et seq; provided, however, no discovery proceedings prior to hearing other than set forth herein, shall be permitted. The parties shall pay their own attorneys' fees and all costs of the arbitration shall be borne equally by the parties. The parties agree that in no event shall American's net interest in NAC be valued in excess of \$4.250 million (the "Cap"). With regard to land or other property under condemnation in NSD v. Kirkland, or any proceeding related to that litigation, whether directly or indirectly, American's share of those items subject to valuation pursuant to paragraph 39 of the Joint Powers Agreement shall include in the Cap those costs and/or recoveries incurred up to and including the Effective Date, and shall exclude from the cap only those costs and/or recoveries incurred and/or received after the Effective Date. With regard to NSD's claim of depreciation during the period of temporary treatment, more particularly set forth in paragraph 3, above, the arbitrator shall have the authority to determine whether such depreciation is a factor in the valuation of American's interest, and may be considered in that valuation, or may be an additional cost of temporary treatment. If the arbitrator determines that such depreciation may be an additional cost of temporary treatment, he shall direct the parties to amend paragraph 3, pursuant to applicable law. The parties recognize that the above figure does not constitute an admission of liability by either party, and in fact that they dispute the means and amount of valuation pursuant to paragraph 39 of the Joint Powers Agreement.

6. Release.

(a) Napa hereby releases American, its agents, successors, Board members, employees and affiliates, from any and all liability in any way related to, whether in whole or in part,

the Joint Powers Agreement. This release constitutes a general release notwithstanding the provisions of California Civil Code Section 1542, which provides in pertinent part as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

(b) American hereby releases Napa, its agents, successors, Board members, employees and affiliates, from any and all liability in any way related to, whether in whole or in part, the Joint Powers Agreement. This release constitutes a general release notwithstanding the provisions of California Civil Code Section 1542, which provides in pertinent part as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Indemnity.

(a) Napa hereby indemnifies and holds American harmless from any claims made by a third person not a party to this Agreement against American for acts of Napa, within ten (10) years of this Agreement, which claims are made pursuant to the responsibilities of the parties, under the Joint Powers Agreement and during the term thereof. This indemnity includes an indemnity against all claims, costs, damages, and attorney's fees related thereto, for a period of four years from the effective date of this Agreement. In addition to the foregoing, as of the Effective Date Napa hereby indemnifies and holds American harmless from all costs, attorneys' fees and/or liability directly or indirectly related to the NSD v. Kirkland litigation.

(b) American hereby indemnifies and holds Napa harmless from any claims made by a third person not a party to this Agreement against Napa for acts of American, within four (4) years of this Agreement, which claims are made pursuant to the responsibilities of the parties, under the Joint Powers Agreement and during the term thereof. This indemnity includes an indemnity against all claims, costs, damages, and attorney's fees related

thereto, for a period of four years from the effective date of this Agreement.

8. General. This Agreement constitutes the entire agreement among the parties, and may not be amended unless said amendment is reduced to writing and signed by both American and Napa. This Agreement shall be binding upon the parties' respective successors, assigns, and governing bodies. The unenforceability in law of any provision of this Agreement, shall not affect the enforceability of the balance of this Agreement. If legal action is required to either enforce or construe the terms of this Agreement, Napa and American agree to bear their own attorneys' fees and costs incurred therein.

9. Notice. Any notices required to be made hereunder, shall be deemed given if in writing and either personally delivered or by registered or certified mail, return receipt requested. If personally delivered, the notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, return receipt requested, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the address designated below as to the party to whom the notice is to be sent, or (b) five (5) days after registered or certified mail, return receipt requested, containing such notice or communication, properly addressed with postage prepaid if deposited in the United States mail. Such notice or communication shall be given to the parties at the designated addresses below:

FOR NAPA: John W. Stewart, P.E.
Napa Sanitation District
P.O. Box 2480
Napa, California 94559

With a copy to: L. Randolph Skidmore, Esq.
COOMBS & DUNLAP
1211 Division Street
Napa, California 94559

FOR AMERICAN: Ronald L. Kiedrowski, City Manager
CITY OF AMERICAN CANYON
2185 Elliott Drive
American Canyon, California 94589

With a copy to:

William D. Ross, Esq.
ROSS & SCOTT
A Professional Corporation
520 South Grand Avenue, Suite 300
Los Angeles, California 90071

10. Joint Preparation. It is agreed and understood by the parties hereto, that each party has cooperated in the drafting and preparation of this Agreement and that neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code Section 1654.

11. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized representative of the party against whom enforcement of a waiver is sought and refers expressly to this section. No waiver of any right or remedy in respect of any occurrence or event shall be deemed waiver of any right or remedy in respect of any other occurrence or event.

12. No Third Party Beneficiary. The only parties to this Agreement are Napa and American and their successors in interest or assignees. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

13. Cooperation In The Event Of Legal Challenge. In the event of any legal action instituted by third party or other governmental entity or official challenging the validity of any provisions of this Agreement, the parties hereby agree to affirmatively cooperate in defending said action, each party bearing its attorneys' fees and costs.

14. Cooperation In Implementing Agreement. The parties further warrant, covenant and agree that neither shall oppose or interfere in any manner efforts of the other party to secure any governmental authorizations, permits, licenses or agreements necessary to effect sewer transmission, wastewater treatment and discharge in compliance with all applicable laws.

15. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and venue for any legal action brought by any party with respect

to this Agreement shall be the County of Napa, State of California for state actions, unless otherwise agreed by all parties involved in such legal action and the Northern District of California for any federal actions, unless otherwise agreed by all parties involved in such legal action.

16. Assignment. Neither this Agreement, nor any duties or obligations under this Agreement may be assigned by either party without the prior written consent of the other, which consent may not be unreasonably withheld.

17. Exhibits. The exhibits to this Agreement are:

- (a) Exhibit "U," Baseline Loading;
- (b) Exhibit "V," portraying sequentially the (i) diversion pipeline across a Southern Pacific Rail Road right-of-way; and, (ii) the Industrial Trunk #3 Diversion Pipeline;
- (c) Exhibit "X," Schedule "X-1," (Method of Determining Napa Service Fee), Schedule "X-2" (Formula for allocating operations and maintenance costs for Soscol Plant);
- (d) Exhibit "Y-1," Airport Facilities Map; "Y-2," Chardonnay Golf Facilities; and
- (e) Exhibit "Z," Schedule "Z-1" (Sanitary Engineers), Schedule "Z-2" (Financial Advisors to the Public Sector), Schedule "Z-3" (MAI Appraisers).

18. Counterparts. This Agreement consisting of thirteen (13) pages is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of ten (10) pages which constitute the entire understanding and agreement of the parties.

WITNESS THE FOLLOWING SIGNATURES:

NAPA SANITATION DISTRICT

Dated: 2-18-94

By: Ed Solomon
Ed Solomon, Chairman

ATTEST:

Susan Stapes

CITY OF AMERICAN CANYON

Dated: 2-25-94

By: D. L. Mahanay
Rick Mahanay, Mayor

ATTEST:

Shelley Randall

APPROVED AS TO FORM:

COOMBS & DUNLAP for Napa
L. Randolph Skidmore
By: L. Randolph Skidmore

ROSS & SCOTT, for American

William D. Ross
By: William D. Ross

TABLE U

BASELINE LOADING

Month/ Year	Monthly Av EDU	Maximum Daily EDU
Oct 92	2,310	2,909
Nov	2,222	2,612
Dec	2,718	4,543
Jan 93	5,103	8,771
Feb	3,752	5,123
Mar	3,651	4,287
Apr	2,758	4,316
May	2,052	2,612
June	2,016	3,083
July	1,753	1,844
Aug	1,985	2,690
Sept	2,429	3,431
Monthly Avg.	2,733	3,852

Average of the daily
maximum EDU divided by 1.5

2,568

American shall pay connection fees based on exceeding the greater of the twelve-month average EDU's or the twelve-month average of the maximum daily EDU's each month divided by 1.5

$$\text{EDU's} = \frac{\text{Daily Flow (gal)}}{210 \text{ gal/day}} \left[.5 + \left(\frac{\text{BOD mg/l} \times .25}{175 \text{ mg/l}} \right) + \left(\frac{\text{SS mg/l} \times .25}{200 \text{ mg/l}} \right) \right]$$

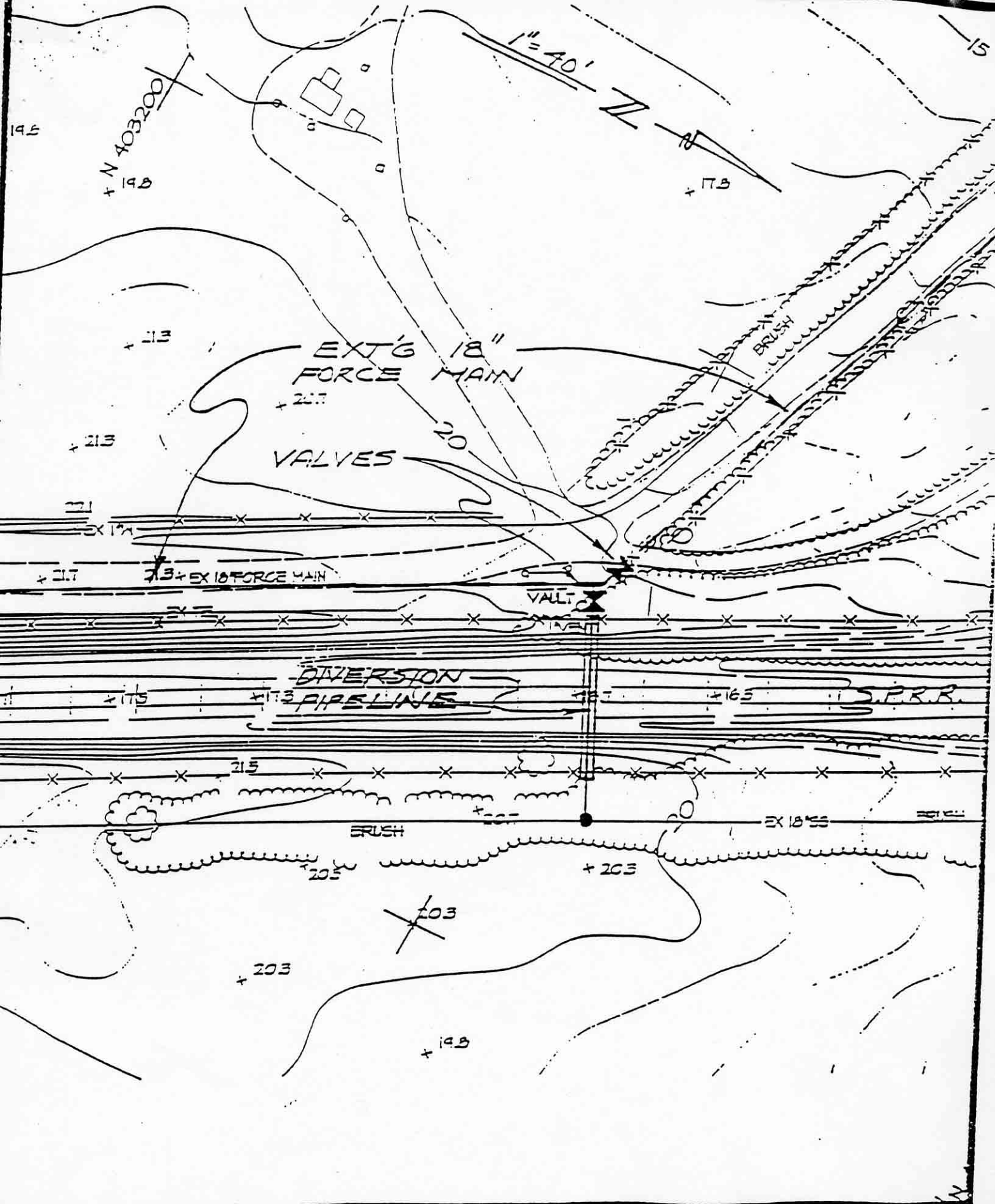
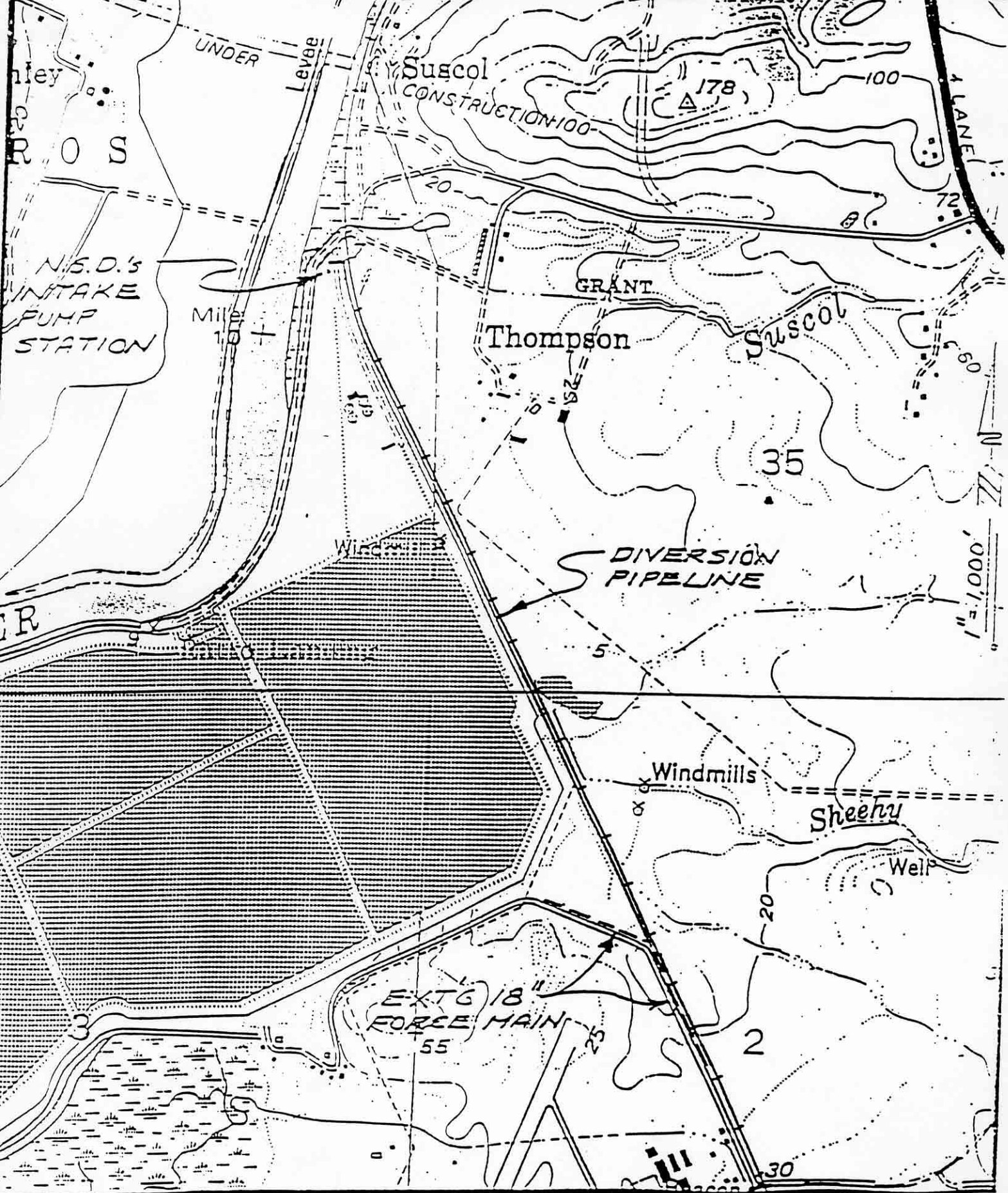


EXHIBIT V



INDUSTRIAL TRUNK #3

SCHEDULE X-1

Method of Determining Napa's Service Fee

S = total number of employees budgeted each year to the Soscol Plant operations.

C = total number of employees budgeted each year to Napa collection system maintenance crew.

AT = Monthly Napa administration costs.

AS = Monthly administrative costs allocated to Soscol facilities.

AC = Americans monthly share of administrative costs allocated to the Soscol facilities.

$$AS = \left(\frac{S}{S + C} \right) (AT)$$

$$AC = (AS) \left(\frac{F}{TF} \right)$$

F = American's flow to Napa that month

TF = The sum of the flow of American's and Napa in that month

SCHEDULE X-2

Formula For Allocating Operations and Maintenance Costs for Soscol Plant

Operations and Maintenance Costs shall be determined on a monthly basis and shall be allocated to American as follows:

$$P = OM (X F/TF + Y BOD/TBOD + Z SS/TSS)$$

XY and Z shall be determined at the beginning of each budget year using the following method:

		Allocated to Flow	Allocated to BOD	Allocated to SS
Budget Item	Budgeted O & M	Amount	Amount	Amount
Soscol Plant	A	.34A	.33A	.33A
Reclamation	B	B		
Total	A + B	.34A + B	.33A	.33A
Percent				
Allocated to: FLOW = X =		$\frac{(.34A + B)}{A + B}$	BOD = Y = $\frac{.33A}{A + B}$	
Percent Allocated to SS = Z = $\frac{.33A}{A + B}$				

Where:

- P = American's share of the Soscol Plant operation and maintenance costs in a month
- OM = the Soscol Plant Operation and Maintenance costs in that month
- F = American's flow in that month
- TF = the sum of the flow of American and NSD in that month
- BOD = American's pounds of 5-day Biochemical Oxygen Demand(BOD) in that month
- TBOD = the sum of the 5-day Biochemical Oxygen Demand(BOD) of American and NSD in that month
- SS = the pounds of American's suspended solids in that month

Schedule X-2 .cont.

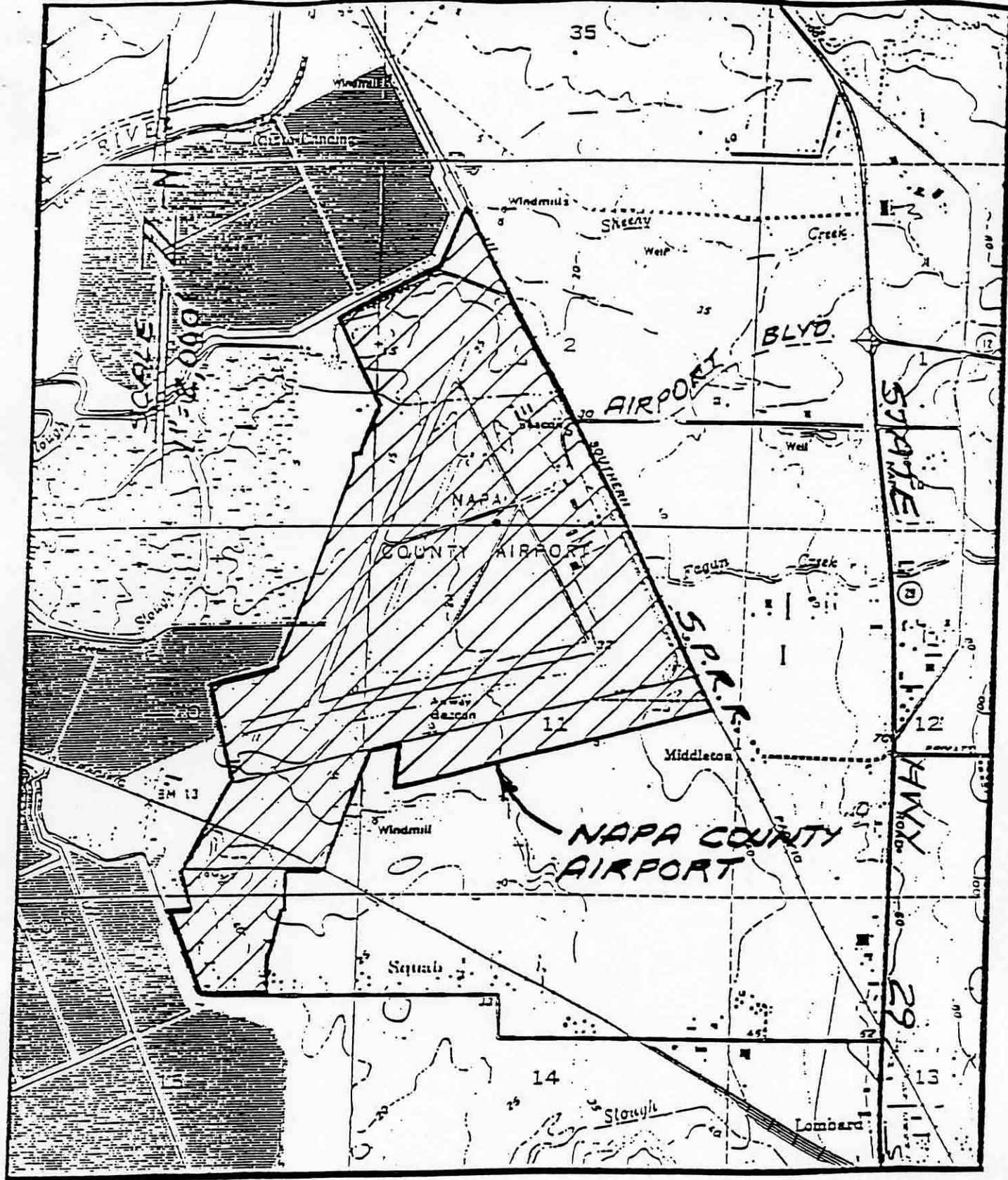
TSS = the sum of the pounds of monthly suspended solids of American and NSD in that month

A = budgeted Operation & Maintenance costs for Soscol Plant

B = budgeted Operation & Maintenance costs for Reclamation

Soscol Plant = All those facilities that are used to treat and dispose of or reuse the combined wastewater flow from American and NSD.

Operation and Maintenance Costs = the cost of supplies, equipment, services, lease payments, taxes, labor and the regular performance of work required to assure continuous functioning of the Facilities and corrective measures taken to repair the Facilities to keep them in operating condition and shall not include general administrative expenses and costs of Facility Improvements.



AIRPORT
FACILITIES MAP

December 13, 1993

SCHEDULE Z

Lists from which arbitration consultants shall be drawn.
(Shown in Sub-Schedules Z-1, Z-2, and Z-3)

SCHEDULE Z - 1

Sanitary Engineers

Elmer Ross, P.E.
510-357-8084
Oakland, CA
Retired General Manager
East Bay Municipal Utilities District

Gerome (Jerry) Gilbert, P.E.
510-254-8863
Orinda, CA
Retired General Manager
East Bay Municipal Utilities District

Walt Garrison, P.E.
818-355-2225
Arcadia, CA
Retired Chief Engineer
Los Angeles County Sanitation District

Walter McClean, P.E.
510-433-4897
Retired Chief Engineer
East Bay Municipal Utilities District

SCHEDULE Z - 2

Financial Advisors to the Public Sector

Bill Fieldman
Fieldman, Rolapp & Assoc
Irvine, CA
714-660-8500

Richard Howell
Montgomery Watson
Seattle, WA

Dave Prasifka
Keith Engineering
2955 Red Hill Avenue
Costa Mesa, CA 92626
714-668-7164

Dave Richardson
CH2MHill
1111 Broadway, Suite 1200
Oakland, CA 94604
510-251-2426

Allen Highstreet
(Econ Group)
CH2MHill
Sacramento, CA
916-920-0300

Robert Hilton
Hilton, Farnkopf & Hobson
Fremont, CA
510-713-3270

SCHEDULE Z - 3

MAI Appraisers

Ronald Crocker and/or Geoffrey Hornsby
Crocker & Hornsby
819 Third Street
Santa Rosa, CA 95404
707-575-7777

Bruce Harding
899 Gravenstein Highway
Sebastapol, CA 95472
707-823-7388

Robert Koenitzer
Redwood Empire Appraisers
205 Keller Street, Suite B
Petaluma, CA
707-763-2772

Ray Simonds
Ray Simonds and Associates
1327 Texas Street
Fairfield, CA
707-425-1005

SETTLEMENT AGREEMENT

THIS AGREEMENT, between the NAPA SANITATION DISTRICT, a County special district (NSD), and the CITY OF AMERICAN CANYON, a California municipal corporation (the City), is made effective as of July 1, 1994, is executed as of the dates indicated hereinbelow, and is as follows:

R E C I T A L S:

A. NSD and the City are parties to an agreement ("Dissolution Agreement"), with an effective date of September 30, 1993, executed by NSD on February 18, 1994 and by the City on February 25, 1994.

B. Pursuant to paragraph 5 of the Dissolution Agreement, the parties were to meet and confer to attempt to settle the question of the valuation of the City's interest in NAC, on no fewer than two occasions, between February 22, 1994, and May 25, 1994, to attempt to settle the question of the valuation of the City's interest in NAC, prior to arbitration of the matter, which was set to commence on June 6, 1994;

C. The parties stipulated to an extension of the settlement deadline and in fact met and conferred on June 2, 1994, and arrived at a proposed settlement of the valuation of the City's interest in NAC, which settlement was approved by the City Council on June 3, 1994, and by the NSD Board on June 4, 1994;

D. The proposed settlement was read into the record by counsel, before Judge Kongsgaard, on Monday morning, June 6, 1994, which settlement is as follows:

A G R E E M E N T:

1. Valuation of the City's Interest in NAC. The value of the City's entire interest in NAC is agreed to be the sum of \$1.94 million. This value is a net value, inclusive of any and all existing and potential rights, obligations and/or liabilities of the City to NSD or resulting from the City's membership in NAC, except as provided in the Dissolution Agreement and this

Agreement. Among other things, the net value includes any obligations of the City to NSD for temporary treatment services or financial obligations through June 30, 1994 (as well as any obligations of NSD for either treatment or financial accommodations to the City).

2. Payment by NSD. NSD shall pay the value of the City's interest in NAC, as set forth in Agreement Paragraph 1, as follows:

a. NSD will pay the City \$500,000.00 in cash on or before June 30, 1994;

b. Further payments shall be made pursuant to the "Payment Schedule," which is attached hereto as Exhibit "A," and incorporated herein by reference. Payments set forth include all obligations of NSD to the City, including any interest obligations. For purposes of that Schedule, the "Minimum Maintenance Fee," is the estimate of the City for its use of NSD facilities for wastewater treatment. The City has estimated its wastewater treatment needs and has set the value at \$30,000.00 per month. The parties agree that each payment to the City disclosed on the Payment Schedule, shall be offset by the Minimum Maintenance Fee, on a quarterly basis;

c. If the average quarterly use by the City of NSD facilities, which calculation of use shall be done pursuant to paragraph 2 of the Dissolution Agreement, exceeds the Minimum Maintenance Fee, such increased use will be invoiced to the City and due and payable within thirty (30) days;

d. There shall be no "carry-over" credit of maintenance fees below Thirty Thousand Dollars (\$30,000.00) per month, to any subsequent month, during the Term (as defined in Agreement Paragraph 4);

e. The Minimum Maintenance Fee shall be \$30,000.00 per month through June 30, 1998, if temporary treatment service continues to be provided by NSD to the City;

f. The City guarantees that, through June 30, 1996, it will credit NSD against the amount owing for the value of the City's interest, at the Minimum Maintenance Fee, whether temporary treatment service is provided or not.

3. Imposition of Significant Industrial User Status.

Paragraph 2(c) of the Dissolution Agreement is amended to provide as follows:

"During months 54 to 60 of temporary wastewater treatment pursuant to this Agreement, the service fee operations and maintenance costs for American shall be calculated as if American were just another Industrial Discharger, and classified as a Significant Industrial User. Monthly sewer service charges shall be calculated per the then-current Ordinance 67, Section 805.00, 'Industrial Waste Charges.' To exercise this second one-year option, American shall notify Napa prior to the end of the 44th month."

4. Term. This Agreement shall be for a term of 48 months from the Effective Date.

a. Provided, however, the City will neither shut down nor substantially reduce for at least 24 months after the effective date, its current treatment operations; and

b. Provided, further, after 24 months from the effective date, the City may withdraw from the use of NSD facilities for treatment services, upon 180 days written notice to NSD, given at any time during the Term hereof; and

c. Upon such withdrawal, NSD will pay to the City the net balance owing for the value of its interest in NAC, as reflected in the Payment Schedule on Exhibit "A."

5. Dispute Resolution. If either party believes that the calculation of the actual cost of service in excess of \$30,000 per month for temporary treatment by NSD to the City is calculated incorrectly, the party holding that belief shall provide written notice thereof to the other party, stating the reasons therefor. NSD and the City and their respective consulting engineering firms shall negotiate in good faith and attempt to correct the

calculation, if such correction is necessary. If NSD and the City are unable to agree, then the parties' respective engineering firms shall select a mutually agreeable independent engineering firm that will act as a Special Master to determine modifications. The decision of the Special Master shall be final and binding upon NSD and the City. The Special Master is not required to hold formal hearings but must consult with NSD and the City, or their respective engineering firms. The costs and expenses of the Special Master shall be borne equally by NSD and the City.

6. Notices. Any notices required to be made hereunder, shall be deemed given if in writing and either personally delivered or conveyed by registered or certified mail, return receipt requested. If personally delivered, the notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, return receipt requested, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the address designated below as to the party to whom the notice is to be sent, or (b) five (5) days after registered or certified mail, return receipt requested, containing such notice or communication, properly addressed with postage prepaid if deposited in the United States mail. Such notice or communication shall be given to the parties at the designated addresses below:

FOR NSD: John W. Stewart, P.E.
 Napa Sanitation District
 P.O. Box 2480
 Napa, California 94559

With a copy to: L. Randolph Skidmore, Esq.
 COOMBS & DUNLAP
 1211 Division Street
 Napa, California 94559

FOR THE CITY: City Manager
 CITY OF AMERICAN CANYON
 2185 Elliott Drive
 American Canyon, California 94589

With a copy to: William D. Ross, Esq.
ROSS & SCOTT
A Professional Corporation
520 South Grand Avenue, Suite 300
Los Angeles, California 90071

7. General Provisions.

a. Entire Agreement. This Agreement constitutes the entire agreement among the parties, and may not be amended unless said amendment is reduced to writing and signed by both the City and NSD.

b. Binding Effect. This Agreement shall be binding upon the parties' respective successors, assigns, and governing bodies.

c. Enforceability. The unenforceability in law of any provision of this Agreement, shall not affect the enforceability of the balance of this Agreement.

d. Attorneys' Fees. If legal action is required to either enforce or construe the terms of this Agreement, NSD and the City agree to bear their own attorneys' fees and costs incurred therein.

e. Joint Preparation. It is agreed and understood by the parties hereto, that each party has cooperated in the drafting and preparation of this Agreement and that neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code Section 1654.

f. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by duly authorized representative of the party against whom enforcement of a waiver is sought and refers expressly to this section. No waiver of any right or remedy in respect of any occurrence or event shall be deemed waiver of any right or remedy in respect to any other occurrence or event.

g. No Third Party Beneficiary. The only parties to this Agreement are NSD and the City and their successors in interest or assignees. There are no third party beneficiaries and this Agreement is not intended, and shall

not be construed to benefit or be enforceable by any other person whatsoever.

h. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and venue for any legal action brought by any party with respect to this Agreement shall be the County of Napa, State of California for state actions, unless otherwise agreed by all parties involved in such legal action and the Northern District of California for any federal actions, unless otherwise agreed by all parties involved in such legal action.

i. Cooperation In The Event Of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity or any provision of this Agreement, the parties hereby agree to affirmatively cooperate in defending said action, each party bearing its own attorneys' fees and costs.

j. Assignment. Neither this Agreement, nor any duties or obligations under this Agreement may be assigned by either party without the prior written consent of the other, which consent may not be unreasonably withheld.

k. Counterparts. This Agreement consisting of six (6) pages is executed in two (2) duplicate originals, each of which is deemed to be an original.

8. Dissolution Agreement in Full Force and Effect. This Agreement implements Section 5 of the Dissolution Agreement. Except as provided in this Agreement, all covenants, terms and conditions contained in the Dissolution Agreement remain in full force and effect.

WITNESS THE FOLLOWING SIGNATURES:

NAPA SANITATION DISTRICT

Dated: June 27, 1994

By: Ed Solomon
Ed Solomon, Chairman

ATTEST:

Susan Stapes

CITY OF AMERICAN CANYON

Dated: 6-28-94

By: Richard J. Mahanay, Mayor

ATTEST:

Cheryl Brown

APPROVED AS TO FORM:

COOMES & DUNLAP, for NSD
L. Randolph Skidmore
By: L. Randolph Skidmore

ROSS & SCOTT, for the City

William D. Ross
By: William D. Ross

Proposed Payment Schedule

<u>Date of Payment</u>	<u>Amount of Payment to City</u>	<u>Minimum Maintenance Fee Pursuant to Dissolution Agreement</u>	<u>Balance Owing</u>
6/30/94	\$ 500,000		
9/30/94	\$ 90,000	\$ 90,000	\$1,440,000
12/30/94	\$ 90,000	\$ 90,000	\$1,350,000
3/30/95	\$ 90,000	\$ 90,000	\$1,260,000
6/30/95	\$ 90,000	\$ 90,000	\$1,170,000
9/30/95	\$ 90,000	\$ 90,000	\$1,080,000
12/30/95	\$ 90,000	\$ 90,000	\$ 990,000
3/30/96	\$ 90,000	\$ 90,000	\$ 900,000
6/30/96	\$ 90,000	\$ 90,000	\$ 810,000
9/30/96	\$ 90,000	\$ 90,000	\$ 720,000
12/30/96	\$ 90,000	\$ 90,000	\$ 630,000
3/30/97	\$ 90,000	\$ 90,000	\$ 540,000
6/30/97	\$ 90,000	\$ 90,000	\$ 450,000
9/30/97	\$ 90,000	\$ 90,000	\$ 360,000
12/30/97	\$ 90,000	\$ 90,000	\$ 270,000
3/30/98	\$ 90,000	\$ 90,000	\$ 180,000
6/30/98	\$ 90,000	\$ 90,000	\$ 90,000
			\$ 0
	<u>\$1,940,000</u>	<u>\$1,440.000</u>	